

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 90.

MONSERRATE GARCIA MAYTIN, DOMINGA GARCIA
MAYTIN, ET AL., APPELLANTS,

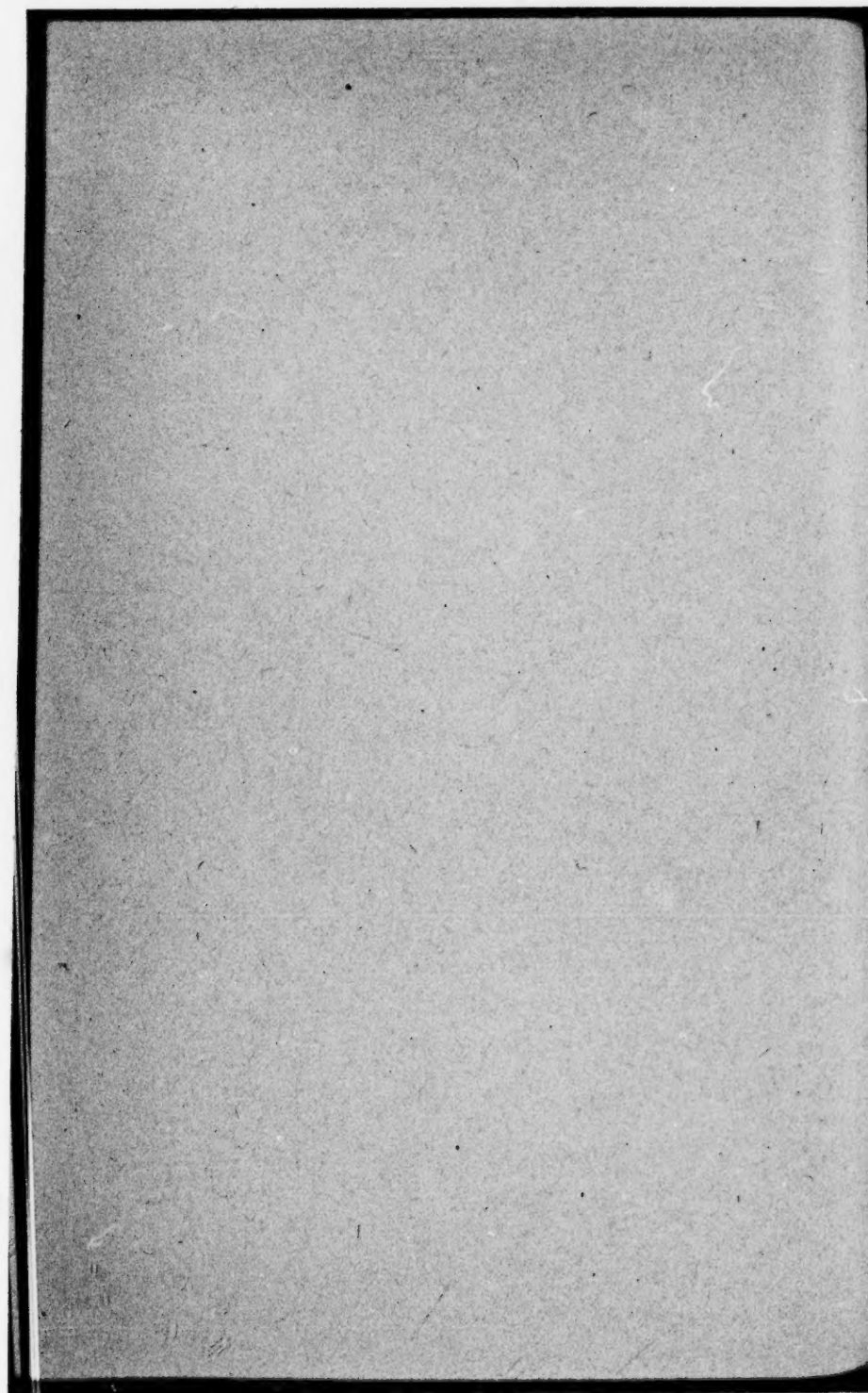
VS.

RICARDO VELA, JOSE QUIJANO, ET AL.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

FILED MARCH 2, 1908.

(21,051.)



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1 In the District Court for the Judicial District of San Juan,
Porto Rico.

MONSERRATE and DOMINGO GARCÍA MAYTIN and ANA MARIEN Y
Dávila, the latter as Representative of Her Husband, Mr. Angel
García, Plaintiffs,

vs.

RICARDO VELA, JOSÉ QUIJANO, HEIRS OF BEATRIZ ALOS, SUCCESSORS
of José Caldas, Ramón Valdés, and Other Unknown Persons,
Defendants.

Action for the Annulment of a Will and of Certain Contracts and
for the Recovery of Properties.

Now come before the honorable Court Mrs. Monserrate García
Maytin and Mrs. Dominga García Maytin, the former unmarried
and the latter a widow, both of full age, natives of Porto Rico and
residing at Madrid, and Mrs. Ana Marien Davila, of age, a native
of Porto Rico and residing also at Madrid, and who appears in behalf
of her husband, Mr. Angel García Maytin, whose representation she
legally assumes by the absence of the same, whose whereabouts are
unknown, all appearing through the undersigned attorney and state:

That they bring the present suit for the purposes stated in the
prayer of this complaint against Ricardo Vela, a merchant and resi-
dent of Bayamon, as testamentary executor appointed in the first
place by Mrs. Beatriz Alós de los Angeles, widow of Mr. García
Maytin; against her testamentary heirs or legatees, who are, as far
as this party knows, the mother of the testatrix, Mrs. Beatriz de los
Angeles, whose residence is unknown to this party, and the
children of Mr. José Quijano, who reside in Bayamon; against

2 Mr. Ramon Valdes, a proprietor and resident of Bayamon,
who acquired certain properties claimed by the plaintiffs; against the
succession of José Caldas y Caldas, for the proper reason, he being the
purchaser of a house, marked with number seventy-five, situated on
San Sebastian Street in this City; and against any other person who
may have acquired from Mrs. Beatriz Alós any property belonging
to the inheritance of Mr. Manuel García Maytin, or who may have
an interest therein.

This party states the following facts as cause of action:

First.

Mrs. Beatriz Alós de los Angeles, the widow of Mr. García Maytin,
died in Bayamon on the 18th day of September last, and she dis-
posed, by her last will, of certain estates whose property was to be
reserved, according to law, in favor of the plaintiffs, whom I repre-
sent, whose rights have been absolutely ignored by her, and which
property is now rightfully claimed.

Second.

Mrs. Beatriz Alós was acknowledged by an order entered on the 1st of June, 1892, by the Court of the Cathedral Ward in this city, as the sole and universal heir abintestate of her daughter Mrs. Beatriz García, who died in Bayamon on the 28th of September 1891, said acknowledgment having been made for the proper effects, according to law, without prejudice to third parties, and expressly reserving in favor of Mr. Lorenzo Ruiz Ibarra, the surviving spouse of the said Mrs. Beatriz García, the legal portion in usufruct belonging to him.

3

Third.

The Inheritance which Mrs. Beatriz Alós received from her daughter Mrs. Beatriz García, as a consequence of the aforesaid order, was composed of the same properties which were awarded to the latter in the partition proceedings made and approved by the judicial authority in regard to the estates which were supposed to have been left at the time of the death of Mr. Manuel García Maytin, father of the latter and husband of the former, who also died in Bayamon on the 6th of March, 1886.

The order approving the partitions of the inheritance of Mr. García Maytin bears the date of February 4th, 1887 and was made by the Court of the Cathedral District in certain proceedings relating to the designation of heirs and in the necessary testamentary proceedings prosecuted before said court and in the notarial office of Mr. Sanjuan by Mrs. Beatriz Alós on behalf of her minor and only daughter Mrs. Beatriz García.

The order entered by the said court designating Mrs. Beatriz García, the daughter of Mr. Manuel García Maytin, as his only and universal heir, bears date of the 6th of June, 1886.

Fourth.

It is not only a fact that Mrs. Beatriz Alós inherited from her daughter the same estates which the latter in turn inherited from her father, but the case could not be otherwise because said estates having been brought by Mrs. Beatriz García to her marriage with Mr. Ruiz Ibarra, as paraphernal property, the same could not be subject to partition with the latter, because the only property subject to partition between them was that belonging to the conjugal partnership which might be considered as property earned or acquired during the short time of existence of the said marriage, that is to say, from the 2nd day of March 1891, on which date the same was celebrated, until the 28th day of September, 1891, which, as above stated, is the date of the death of the wife of Mr. Ruiz Ibarra, the daughter of Mrs. Beatriz García.

Said paraphernal property could not be, either the subject of any negotiation by the widower regarding the ownership thereof, because from the very same moment on which Mrs. Beatriz García died, her mother Mrs. Beatriz Alós had the right, by force of law, to enjoy the usufruct of the same.

Fifth.

The properties inherited by Mrs. Beatriz Alós from her daughter, who in turn had inherited the same from her father, were subject to be reserved or set apart, since the death of Mrs. Beatriz García, in favor of the relatives who are within the third degree belonging to the line from which such properties originated, in accordance with the imperative provision of Sec. 811 of the Civil Code then in force, which was extended to Porto Rico by a Royal Decree of July 31st, 1889 and which section under number 799 has entirely become a part of the Civil Code which went into effect on the 1st of July, 1902.

Since the death of Mrs. Beatriz García's mother that is to say, since the death of Mrs. Beatriz Alós, which occurred some days ago, the entire ownership of the said estates belongs to the plaintiffs herein, who are the only relatives alive and who have the conditions required by law.

5

Sixth.

The foregoing facts which will be fully proven in the course of the suit together with the description or specifications of the estates referred to, as well as the action of Mrs. Beatriz Alós in disposing of the said property by her last will or testament, in favor of persons other than those who demand the same, would be sufficient to prove the right of the plaintiffs, whom I represent, and to justify the action brought by them, which could be termed, as far as the facts stated are concerned, an action for the annulment of the said will and for the recovery of properties.

But the honorable court will have an opportunity to see that the claims of the plaintiffs whom I represent have to be extended necessarily to some other acts and to some other properties.

Seventh.

In effect it is not true that the inheritance left by Mr. Manuel García Maytín to his daughter Mrs. Beatriz García, after deducting all liabilities and encumbrances solely consisted of the amount and of the properties stated in the partition proceedings referred to in the third fact of this complaint.

The value of the properties awarded to the minor Mrs. Beatriz García was not thirteen thousand and eighteen pesos and twenty-two centavos, nor the share or interest which belonged to her in the coownership of the estate "Santa Rosa" was constituted by nearly a third part thereof, regardless of the capricious appraisement which was made of the properties constituting the inheritance of Mr.

6 García Maytín, which appraisement was made without any regard as to whether it was proportionate or not and to avoid probably the payment of the taxes, nor the said undivided third part of the estate "Santa Rosa" together with the house number 75 situated in San Sebastian Street, and eight carts and three plows, could constitute the true remainder of the properties of Mr. García Maytín, and therefore and by being as they were the assigner's own or private property was not, either what could constitute the inheri-

ance left to his daughter Mrs. Beatriz Garcia. It would be sufficient to prove this statement to bear in mind that if the assigner's properties were appraised for half or less than one half of their true value, all debts or liabilities which were considered as existing did not suffer any change whatever in their uncertain amount which was stated as a definite amount and as the schedule or inventory of the debts and that of the properties subject to the payment thereof, were awarded to the widow, the income belonging to the minor and sole heir was thereby greatly diminished.

Eighth.

It is shown by the intestate proceedings of Mr. Garcia Maytin that his widow, Mrs. Beatriz Alos, not only requested the designation of heir in favor of their daughter Mrs. Beatriz Garcia, but also the appointment of a curator *ad litem* to represent the latter in the judicial partition of the said inheritance, and Mrs. Alos alleged as grounds for her request the interest which she said she had in the partition proceedings on account of her share in the properties belonging to the conjugal partnership.

Mr. Eduardo Rodeyro was appointed by the minor as her curator and he was constantly in accord with Mrs. Beatriz Alos for the purpose of making simultaneously the *the* inventory and appraisalment of the properties left, and also as to the designation of experts, giving besides his consent to place the administration, custody and preservation of the properties under the care of Mrs. Alos, and of course, he entirely agreed to the inventory, the appraising of the properties and the partition which was made thereof, to which the minor also gave her consent.

However, in spite of such a formality it appears that when the partition was made, the widow stated that there was no conjugal partnership at all, but notwithstanding that fact, her intervention as interested party to the partition contract still remained, and the schedule of liabilities as well as the properties subject to the payment thereof, are awarded to her, just as if she were a real party in interest or an heir, she giving her consent to such award.

It appears that the liabilities are raised to a very high amount and as the appraisalment made of the properties was too low, the debts thereof take nearly three-fourths of the inheritance.

It appears that the cause or motive of the debts is not stated in the said partitions, but, on the other hand, it is very easy to see that the name of a creditor Mr. José Hernaiz who appears as such in the judicial inventory of the properties, has been substituted for that of another and different person in the liquidation account and partition proceedings, wherein Mr. Antonio de Arana has taken the place of Mr. José Hernaiz, by the easy method of writing upon the latter's name, the name of the former.

There appear judicial proceedings and acts wherein the signature of some persons has been attested, when, as a matter of fact, said persons do not sign at all and the above has occurred in the partition account which has been attested and which is found in the proceedings referred to.

It appears that the adjudication or award of certain estates, whose boundaries are not entirely fixed as yet, has been approved, but different blanks have been reserved therefor; and there occur, probably in the said proceedings, other irregularities which we are not going to examine now.

Ninth.

Now, this party cannot accept the partition which was made of the properties of Mr. Garcia Maytin, among which there was none which might belong to the conjugal partnership as shown by the widow's own confession.

And whether the plaintiffs may or may not assume the representation and actions of Mrs. Beatriz Garcia, who died under age, they undoubtedly can demand that the said partition contract be held to be null and void, because the same appears now to have been made to their prejudice and in plain violation of the right of property secured by law upon the estates belonging to Mr. Garcia Maytin, on behalf of the plaintiffs.

Tenth.

Mrs. Beatriz Alos has not shown in any way whatever judicially or extrajudicially either to the minor or after her death, to the plaintiffs herein, the investment or use made by her of the properties which were awarded to her for the payment of the debts, nor has she shown the actual payment thereof, but on the contrary the greater part of the properties which were awarded to her for that purpose, or those of the highest value, still appear recorded in the

Registry of Property in favor of the said lady, who disposed of the same freely by her last will, whereby it is plainly shown that there are no debts against the estates or inheritance of Mr. Garcia Maytin, or, at all events, granting that said debts do exist, which is inadmissible, that the same are barred by prescription, under Chapter III, Title XVIII Book IV of the former Civil Code as well as of that now in force.

These plaintiffs maintain that the statement made in the partition proceedings relating to the property of Mr. Manuel Garcia Maytin to the effect that there existed some debts against the estates of the latter, is inaccurate, and that the schedule or inventory of such debts is not true; and this party further maintains that the only existing debts against the inheritance were constituted by the interest of certain census acknowledged therein, and which have not been redeemed, and by the expenses caused by the funeral and by the testamentary proceedings.

The inaccuracy of the appraisement made of the said properties is plainly shown by the statement or list of the properties subject to be appraised which is included in the deed of partition, to which this party adds his express confirmation to the effect that said appraisement was not accurate.

The same assertion is made in regard to the statement that all properties, rights and actions belonging to Mr. Garcia Maytin were included in the inventory which was made of his property.

Eleventh.

Mrs. Beatriz Alós has alienated different properties of those which were awarded to her for the purposes above stated.

- 10 The plaintiffs herein have knowledge of the sale made by the said lady to Mr. Ramon Valdes, a resident of Bayamon, of an estate of one hundred and eighteen cuerdas which is described in the thirteenth fact of this complaint and which is known as far as we know, by the name of "Pastillo."

The properties alienated before the death of her daughter were not alienated in accordance with the conditions required by law for the sale of properties belonging to minors; but Mrs. Beatriz Alos and those who acquired the said properties, neglected to make it appear in an authentic manner that such alienations were really made to cover the debts of Mr. Garcia Maytin, this being the only purpose for which said properties could be sold by her and acquired by third parties.

The alienations made after the death of Mrs. Beatriz Alós' daughter were not made either for the payment of debts nor were they made with the intervention and consent of the plaintiffs herein.

The alienations referred to are null and void and at all events are subject to the resolutive condition caused by the fact that the plaintiffs might survive Mrs. Beatriz Alos and claim their right.

Moreover Mrs. Beatriz Alós sold to Mr. José Caldas y Caldas a house marked with the number 75, situated in San Sebastian Street of this City, of which she merely possessed a part in usufruct, but no ownership; whatever, said house having been inherited by her from her daughter to whom it was awarded in the testamentary proceedings of her father Mr. Manuel Garcia Maytin.

- This party does not know whether or not Mrs. Beatriz Alós constituted any mortgage upon the estates of Mr. Garcia Maytin, but if it should have been so, this party maintains that the said mortgages are also null and void or that the same have been extinguished since the death of the said lady.
- 11

Twelfth.

The debts which Mrs. Beatriz Alós could have paid in any case, might have been paid out of the money belonging to the inheritance although the same was not included in the inventory, and at all events they might have been paid out of the proceeds of the properties belonging to Mr. Garcia Maytin.

Thirteenth.

The estates which constituted the inheritance of Mr. Garcia Maytin, and whose ownership belongs at the present time to the plaintiffs herein, as they appear in the partition proceedings thereof and in the minutes relating to the records of said partition made by a notary public, and the appraisalment or valuation of said properties, are as follows:

A coownership appraised in the value of eight thousand four hundred pesos, in the house marked with number 29, situated in San

Jose Street, of this City, bounded on the right as one enters the premises, by the property of Mrs. Elvira Capetillo; on the left by the property of Mr. Fernando Sarraga; at the rear by the property of Mr. E. José Marxuach.

The sugarcane plantation or estate known as "Santa Rosa," situated in the ward of Juan Sanchez, in the jurisdiction of Bayamon, contains eight hundred cuerdas of land, or three hundred and fourteen hectareas and forty areas; a two story dwelling house; three sugar mills with straw roofs, and milling implements, the sugar mills known as San Jose, having been included within the bounds of the plantation inasmuch as they are parts thereof, the said plantation or estate being bounded on the north by an estate
12 which belongs to the sucesión Tourdan; on the south, by property belonging to the Sucesión of Anastacio Maysonet; on the east by lands of the succession of Manuel Cabranes; and on the west by the Rio Grande river. The aforesaid plantation or estate has been appraised in the sum of twenty-two thousand and fifteen pesos.

A house marked with the number 75, situated in San Sebastian Street of this City, bounded on the right as one enters the premises, by the property of Mrs. Antonia Loredó; on the left by property belonging to the Police Force; and in the rear by the northern precinct; the said house has been appraised at five thousand pesos.

One hundred and eighteen cuerdas of land, equivalent to forty-six hectareas, thirty-seven areas and seven centiareas, situated in "El Palmar" in a place known as "Puntillo" in the ward of "El Pastillo" and in the jurisdiction of Bayamon, bounded on the north by a sea-marsh; on the south by lands of Mr. Manuel Fernandez Unpierre; on the east by lands of the same Fernandez; and on the west by the Military road; the said property is known as "El Pastillo" and so it has been named herein, and the same has been appraised in the sum of two thousand and five hundred pesos.

One hundred and sixteen head of black cattle appraised in three thousand four hundred and fifty-seven pesos; seven horses appraised in two hundred and ten pesos; eight carts in one hundred and seventy pesos; three plows appraised at thirty-six pesos; some furniture in use appraised at forty pesos.

The total valuation in coin current at that time amounts to forty-two thousand, seven hundred and eighteen pesos.

13 The estate "Santa Rosa" and the estate "El Pastillo" as far as this party knows, have been recorded in the Registry of Property by virtue of proceedings for recording the possession thereof instituted by the assigner's father with regard to the former estate, and by the assigner with regard to the latter, the date of the judicial approval of the proceedings lastly instituted being that of June 1884 and the inscription or record thereof made in the Registry of Property bears about the same date.

So that, in accordance with Sec. 1957 of the former Civil Code and Sec. 1858 of the Civil Code now in force, the ownership of the aforesaid estates had prescribed prior to the death of Mrs. Beatriz Alá, in favor of the legal assigns of Mr. Manuel Garcia Maytin, who are now the plaintiffs herein. Even if that had not been so, it

is obvious that the right of property of the said estates hereby claimed in favor of the plaintiffs could still be claimed because the idea of ownership includes that of possession, as well as that of all other rights which belonged to the assigner with regard to the said estates.

Fourteenth.

Although the actions herein brought may be termed as they are termed in the caption of this complaint, I want it to be stated for whatever legal effect may be proper that said actions fall within the class of actions mentioned in number four of sec. 104 of the Code of Civil Procedure, by reason of being identical or analogous therewith, and which are claims against a trustee by virtue of a contract or by operation of law, which legal expression logically includes claims against the trustee's assigns or against
14 persons who have an identical or analogous juridical condition.

Fifteenth.

OATH TO THE COMPLAINT.—The plaintiffs herein whom I represent, being absent, I do swear, as a matter of my own knowledge, that Mrs. Ana Marien Dávila has been abandoned long ago by her husband, Mr. Angel García Maytín, and that she has been judicially authorized to appear in court, apart from the right which for such cases is granted to her by the Code of Civil Procedure.

For the same reason I swear upon information and belief to all other facts stated and affirmed in this complaint.

By virtue of the foregoing facts,

I pray the court to be pleased to order, after the filing of this complaint, that Mr. Ricardo Vela, testamentary executor appointed in the first place by Mrs. Beatriz Alós de los Angeles, and Mr. José Quijana, as representative of his minor children instituted as heirs by the said lady be personally summoned. To order further that the other heirs instituted as such by the said lady in her will be summoned by a notice published in the newspapers, and that the succession of Mr. José Caldas y Caldas and the person who acquired the share or coownership which was said to belong to Mrs. Beatriz Alós in the house No. 29, situated in San José Street of this City, as well as all other persons who have acquired any property belonging to the inheritance of Mr. Manuel García Maytín, or who have any interest therein be also summoned by a notice published in the newspapers; and to render judgment at the proper time; holding, 1st. That the will executed by Mrs. Beatriz Alós de
15 los Angeles is null and void with regard to the disposal made thereby of the estates whose ownership fully belongs, by operation of law, to the legitimate brothers and sisters of Mr. Manuel García Maytín, who survived the latter.

2nd. That the properties inherited by Mrs. Beatriz Alós from her daughter Mrs. Beatriz García Alós, who in her turn inherited the same from her father, Mr. Manuel García Maytín, as they appear in the partition proceedings of the estates left at the death of the said Mr. Manuel García Maytín, belong to Mrs. Monserrate, Mrs. Dominga and Mr. Angel García Maytín; the said properties being

a coownership appraised in the sum of seven thousand, eight hundred and twenty-two pesos and twenty-two centavos, in the estate "Santa Rosa" described above; the house marked with number 75, situated in San Sebastian Street of this City; eight carts and three plows.

3rd. That the partition proceedings of the inheritance of Mr. Manuel Garcia Maytin are null and void, especially with regard to the appraisal of the properties, the omissions of properties in the inventory made thereof, and with regard to the schedule of liabilities included in said partition proceedings, excepting the interest of the census acknowledged therein and which have not been redeemed, and the expenses caused by the funeral and by the testamentary proceedings.

4th. That, consequently the estate, "Santa Rosa", as well as all the other properties stated and described in the third fact of this complaint, have constituted the inheritance of Mrs. Beatriz Garcia y Alós and that the full ownership thereof belongs now to Garcia Maytin brothers.

5th. That the alienations made by Mrs. Beatriz Alós of the estate "El Pastillo"; of the coownership in the house number 29, situated in San José Street of this City; of the house number 75, situated in San Sebastian Street, also of this City, and, generally, all the alienations made by the said lady of the properties which constituted the inheritance of Mr. Manuel Garcia Maytin, are null and void, or have been extinguished since the death of the said lady; and that any mortgages which she might have constituted upon the said properties are also null and void, or have been extinguished.

6th. That the ownership of the said alienated or mortgaged estates belongs fully and freely to the plaintiffs herein, that is to say, to Garcia Maytin Brothers.

7th. That Mrs. Beatriz Alós heirs are bound to restore and deliver to the plaintiffs herein all personal property and live stock belonging to the inheritance of Mr. Manuel Garcia Maytin, and others, or the value thereof, under the same conditions established for a person having a part in usufruct.

8th. That the proceeds of all the properties of Mr. Garcia Maytin, which were, about to be, collected when Mrs. Beatriz Alós died and all appurtenances thereof to the plaintiffs herein.

SAN JUAN, PORTO RICO, November 12th, 1901.

The above complaint has been hereby amended again by leave of court, and by agreement of the parties, on this 28th day of April, 1905.

N. PEREZ MORIS,

We hereby accept personal service of the foregoing complaint and a copy thereof this 28th day of April, 1905.

WENCESLAO BOSCH,

ACUSA AND MENDEZ ALV. NAVA,

By F. DE LA TORRE Y

EMILIO GARCIA CUERVO.

17 Filed, with the proper copies thereof, on this 28th day of April, 1905. I attest.

JOSÉ FIGUERAS.

18 In the District Court for the Judicial District of San Juan, Porto Rico.

Civil No. —.

MONSERRATE and DOMINGO GARCIA MAYTIN, and ANA MARIEN Y Davila, the Latter as Representative of Her Husband, Mr. Angel Garcia Maytin, Plaintiffs,

vs.

RICARDO VELA, JOSÉ QUEJANO, HEIRS OF BEATRIZ ÁLOS, SUCCESSION of José Caldas, Ramon Valdés and Other Unknown Persons, Defendants.

Action for the Annulment of a Will and of Certain Contracts, and for the Recovery of Property.

Answer.

Now comes Ramon Valdés, through his attorney Antonio Alvarez Nava, and opposes the complaint above stated in so far as the same concerns him and as an answer thereto, alleges:

First.

That the estate known as "El Pastillo" situated in "El Palmar," in the jurisdiction of Bayamon, and which is described in the complaint, the ownership of which is claimed by the plaintiffs, was acquired by this party by purchase, that is to say, for a valuable consideration, from Mrs. Beatriz Alós, by deed executed on the fifth day of May, 1898, and by virtue of said title the same was recorded in his favor in the Registry of Property of this District at folio 226 of Volume 5 of Bayamón.

Second.

19 That the said estate, together with other properties, was awarded to Mrs. Beatriz Alós in the partition proceedings made of the estates of her husband Mr. Manuel Garcia Maytin, subject to the payment of the debts existing against him at the time of his death, and it appears in the registry of property that she acquired said estate by virtue of said title, that is, by virtue of the award or adjudication thereof made in her favor for the payments of debts and not as an inheritance from her daughter Mrs. Beatriz Garcia.

Third.

That this party had no intervention whatever in the partition proceedings of the estates of Mr. Garcia Maytin and, as above stated,

acquired the aforesaid estate from the person who, according to the Registry of Property, had a right to alienate the same, and the cause of the nullity or extinction of the right of said person, now alleged by the plaintiffs, and which is the nullity of the partition proceedings of the inheritance of Mr. Manuel Garcia Maytin did not appear from the Registry of Property.

Fourth.

That although it does not concern or affect this party in any way, whatsoever, whether the said partition proceedings are held or not to be null and void, nevertheless this party desires to state that said partitions were made in the year 1886, by Mr. Manuel N. Peña, who was appointed auditor, with the intervention of the widow Mrs. Beatriz Alós and of Mr. Eduardo Rodeyro, who was appointed Curator ad litem of the minor Mrs. Beatriz Garcia; that said partitions were approved in the year 1887 by a competent judicial authority and were recorded in the same year in the Notary's office of Mr. Mauricio Guerra, who acted as a Notary of this City; and that said partitions have been made according to law in proper and legal form and that the same do not contain any defect or cause
20 of nullity; and furthermore, that even if there was any cause of nullity, which is not granted, the action instituted in the complaint in regard to the nullity of the said partition proceedings is barred by prescription because from the 26th of September 1891 on which date Mrs. Beatriz Garcia, died, until the date of the filing of the suit, nearly fourteen years have elapsed, a period of time which is more than sufficient to bar the action.

Fifth.

That the plaintiffs did not ask, at any time after the death of Mrs. Beatriz Garcia, for the constitution of the legal mortgage referred to in Sec. 168 and 189 of the Mortgage Law, and they neglected to make it appear in the Registry of Property that certain estates acquired by Mrs. Beatriz Alós by inheritance from Mrs. Beatriz Garcia were subject to be reserved in favor of other heirs.

Sixth.

As a consequence of the foregoing facts this party denies that there did not exist any debts against the estate or inheritance of Mr. Manuel Garcia Maytin; that the statement of said estates which appears in the inventory thereof, made in the partition proceedings is not accurate; that all the properties, rights and actions of the assigner Mr. Garcia Maytin were not included in the said inventory; that the appraisement thereof is not accurate; that the debts, if any, had been paid by Mrs. Beatriz Alós out of any money belonging to the inheritance of her husband not included in the aforesaid inventory; that the inheritance left by Mr. Garcia Maytin to her

daughter was not constituted, after deducting all liabilities, by the amount and by the only properties stated in the partition proceedings, and this party finally makes a general denial of all the other facts which may gainsay those stated herein.

By virtue of the foregoing facts.

This party prays the Court to consider that the complaint has been answered and to dismiss the same as to the petition made thereby to the effect that the sale made by Mrs. Beatriz Alós to this party of the estate known as "El Pastillo" be held to be null or extinguished and that the said estate belonged to and is the property of the plaintiffs together with the proceeds thereof from the time of the death of the aforesaid Mrs. Beatriz Alós, and to impose the costs upon the plaintiffs.

San Juan, Porto Rico, May 1st, 1905.

ANTONIO ALV. NAVA,
Attorney for Defendant.

I hereby accept service and a copy of the foregoing answer on the above date as stated.

N. PEREZ MORIS,
Attorney for Plaintiffs.

22 In the District Court for the Judicial District of San Juan, Porto Rico.

MONSERRATE and DOMINGA GARCIA MAYTIN and ANA MARIEN Y Davila, the Latter as Representative of Her Husband, Mr. Angel Garcia Maytin, Plaintiffs,

VS.

RICARDO VELA, THE HEIRS OF BEATRIZ ALÓS, SUCCESSION OF CALDAS y Caldas, Ramón Valdés, and Other Unknown Persons, Defendants.

Action for the Annulment of a Will and of Certain Contracts and for the Recovery of Properties.

Answer to the Complaint.

Now come before the court and in the above entitled case, the Succession of José Caldas y Caldas, and Mrs. Beatriz de los Angeles, the widow of Mr. Francisco Alós, through their undersigned attorney, and in the most proper manner state:

That they hereby answer the amended complaint dated the 28th of April last by entirely reproducing the facts stated in the answers made by the undersigned attorney under the dates of the 9th and 20th of December of the last year 1904 and the 18th of January last, respectively, and

I pray the court to consider that the complaint presented by the plaintiffs has been answered.

San Juan, Porto Rico, May 10th, 1905.

WENCESLAO BOSCH,
Attorney for Caldas and Alós, Defendants.

Filed in my office this 11th of May 1905.

JOSÉ E. FIGUERAS,

Secretary.

The answers referred to in the foregoing writing are as follows:

23 In the District Court for the Judicial District of San Juan,
Porto Rico.

MONSERRATE and DOMINGA GARCIA MAYTIN and ANA MARIEN Y Davila, the Latter as Representative of Her Husband, Mr. Angel Garcia Maytin, Plaintiffs,

VS.

RICARDO VELA, THE HEIRS OF BEATRIZ ALÓS, SUCCESSION OF CALDAS y Caldas, Ramon Valdés, and Other Unknown Persons, Defendants.

Action for the Annulment of a Will and of Certain Contracts and for the Recovery of Properties.

Now comes Mrs. Beatriz de los Angeles, the widow of Mr. Francisco Alós, through her attorney Weenceslao Bosch, and in the most proper manner states:

That Mrs. Beatriz des los Angeles, the widow of Mr. Francisco Alós, having been summoned by a notice published in the newspapers, to answer the complaint filed in this case, I appear in her name to make such answer and I pray the Court to dismiss the complaint at the proper time and to impose the costs upon the plaintiffs.

By reading once the writing which served to institute this suit, one sees the impossibility for the same to meet with success under the form in which it has been brought.

The effect which the plaintiffs seek to give to the claim made by them; the ambiguities and uncertainties which are stated in order to destroy facts which appear in solemn and public instruments; the want of specifications of the plaintiffs' claim; the reluctance to acknowledge certain facts that are plainly evident; and,

24 above all, the petitions openly contradictory made in the prayer of the complaint will convince your Honor of the fact that the action brought under the terms in which the complaint has been filed can meet with no success whatever.

In order to comply with the provision of Sec. 110 of the Code of Civil Procedure now in force, I make this answer on behalf of my client, stating the following

Facts.

I.

Mrs. Beatriz Garcia Alós de los Angeles, the surviving spouse of Mr. Garcia Maytin, executed her will on the 9th of September 1904, before Mr. Thomas Valldejuly, a Notary Public, and by virtue of said will, she made the following bequests to wit: one thousand

dollars to Mr. José Quijano Leizaur; three hundred dollars to Mrs. Guadalupe García y Quiara; she bequeathed half of her inheritance to her nephews Mr. Luis and Mr. Manuel Quixano y Alós and to her niece Miss María Quixano y Alós (after deducting from the same the amount of the aforesaid bequests and the payment of the burial and funeral expenses of the testatrix) said half to be distributed among the said legatees at the rate of two parts thereof for Miss María Quixano y Alós and one part thereof for each of the said Luis and Manuel Quixano y Alós. The testatrix instituted her legitimate mother Mrs. Beatriz de los Angeles, whom I represent, as her heir of the remaining half of her inheritance, and she acquired thereby only that part which could not be disputed to her, that is to say, that part which the law reserves for her as a legal portion.

25 Therefore, the first and sixth facts stated in the plaintiff's complaint are entirely inaccurate in so far as they state that Mrs. Beatriz de los Angeles has disposed, by her last will, of properties belonging to the plaintiffs, because no specifications are made in the said will or testament as to the properties which constitute the inheritance which Mrs. Beatriz left to her heirs.

II.

We accept the second fact stated in the plaintiff's complaint which states that Mrs. Beatriz Alós was recognized by an order entered on the 1st of July 1892, by the Court of First Instance of the Cathedral District of this City, as the sole and universal heir abintestate of her daughter Mrs. Beatriz García, without prejudice to third parties and expressly reserving in favor of Mr. Lorenzo Ruiz Ibarra, the surviving spouse of Mrs. Beatriz García, the legal portion which belonged to him in the inheritance left by his legitimate wife, in the form and for the amount provided for in Sec. 836 of the Civil Code.

III.

The properties which Mrs. Beatriz García Alós, the wife of Mr. Ibarra, had inherited from her father Mr. Manuel García Maytín were the following:

A. A coownership appraised in the value of seven thousand eight hundred and twenty-two pesos and twenty-two centavos, in Mexican currency, in the estate "Santa Rosa" situated in the ward of Juan Sanchez in the jurisdiction of Bayamon, which contains eight hundred cuerdas of land and the total value of which is twenty-two thousand nine hundred and fifteen pesos, in Mexican currency.

26 B. A house marked with the number 75, situated in San Sebastian Street of this City, which was appraised at that time in the sum of five thousand pesos, in Mexican currency.

C. Eight carts which were appraised in the sum of One hundred and seventy pesos.

D. Three plows appraised in thirty-six pesos.

Therefore the inheritance received by Mrs. Beatriz Alós amounted to the sum of thirteen thousand and eighteen pesos and twenty-two centavos in Mexican currency, and so it appears in the partition

proceedings which took place on the 6th of December, 1886, when the heir Mrs. Beatriz García Alós was seventeen years old. Said partition proceedings were not opposed by the said minor after her marriage with Mr. Ruiz Ibarra although she was at that time twenty-two years old, nor were they opposed by her mother and heir Mrs. Beatriz Alós y de los Angeles, nor even by any of the plaintiffs in this suit during a period of time which runs nearly eighteen years, that is to say from December 1886 until November 1904.

IV.

After the death of Mrs. Beatriz Alós and after the designation of heirs had been made in the manner stated in the foregoing fact, Mrs. Beatriz Alós de los Angeles entered into a contract with Mr. Lorenzo Ruiz Ibarra by virtue of which the latter ceded to the former all rights and actions belonging to him as surviving spouse in the inheritance left by his deceased wife the said Mrs. Beatriz García Alós, said cession having been made for the sum of eight thousand pesos, in Mexican currency, which the grantee paid to the grantor.

V.

The facts that in the year 1887 the inheritance received
27 by Mrs. Beatriz García Alós from her father Mr. Manuel García Maytín amounted to the sum of thirteen thousand and eighteen pesos and twenty-two centavos in Mexican currency, and that in the year 1891, when the death of Mrs. Beatriz García Alós occurred the usufruct of one-third of the estates left by the latter had been alienated for the sum of eight thousand pesos in Mexican currency plainly show that the estate inherited by Mrs. Beatriz Alós de los Angeles from her daughter Mrs. Beatriz García Alós were not those which the latter inherited from her father Mr. Manuel García Maytín, but those estates and some other which the said Mrs. Beatriz García Alós did not acquire for a good consideration from her father but which she acquired by virtue of other titles during the period of time which runs from the year 1886 to 1891 which were the years in which Mr. Manuel García Maytín and his daughter Mrs. Beatriz García Alós, respectively, died.

VI.

As neither an inventory was made at the time of the death of Mrs. Beatriz Alós of all her properties nor any specification of the properties which had been acquired by her for a good consideration from her father Mr. Manuel García Maytín, and as no person claiming a right to have the properties reserved in his favor made any request whatsoever regarding this matter, the said properties were wholly transferred to her mother Mrs. Beatriz Alós de los Angeles, a real merger of properties being caused thereby, which was more important and apparent from the moment on which Mrs. Beatriz Alós de los Angeles acquired from Mr. Lorenzo Ruiz Ibarra the
rights belonging to him as surviving spouse.

28 Therefore when Mrs. Beatriz García Alós died in the year 1892 and her mother Mrs. Beatriz Alós de los Angeles ac-

quired her estate in her character of her abintestate, there was, with regard to the latter, a merger of properties composed of properties that belonged to her in her own right, of properties which the aforesaid daughter inherited from her father Mr. Manuel Garcia Maytin, of properties acquired by the latter's daughter during the years from 1886 to 1892, and lastly of the usufruct acquired by Mrs. Beatriz Alós from Mr. Lorenzo Ruiz Ibarra.

VII.

The statement made in the fourth fact of the plaintiffs' complaint to the effect that Mrs. Beatriz Alós de los Angeles inherited from her daughter the same estates which the latter inherited from her father, cannot be accepted because the plaintiffs having acknowledged in the second fact of their complaint that Mrs. Beatriz Garcia Alós married Mr. Ruiz Ibarra and that by an order entered on the 1st of July 1902 the right provided for in Sec. 836 of the Spanish Civil Code was reserved to the latter that is to say the usufruct of one third of the inheritance, it is entirely impossible for Mrs. Beatriz Alós de los Angeles to have inherited the same estates which Mrs. Beatriz Garcia inherited from her father Mr. Manuel Garcia Maytin.

VIII.

It is to be observed that during the twelve years and four months which elapsed from the date of the order entered on July 1st 1892 until the death of Mrs. Beatriz Alós de los Angeles, which occurred on the eighteenth of September last, nobody opposed the designation of heirs made in the form stated, nor any opposition was made either to the inscription or record in the Registry of Property of the full ownership of the estates inherited by Mrs. Beatriz Alós de los Angeles, which full ownership belonged to her after she had acquired from Mr. Lorenzo Ruiz Ibarra all the rights belonging to him as surviving spouse of his deceased wife, which rights were reserved to him by the aforesaid order of July 1st.

IX.

It must be stated as an important fact that by a Royal Decree of the Spanish Government dated the 31st of July 1889, the Spanish Civil Code was promulgated to be in force in this Island, and the same was in force until the 30th of June 1902, on which day said Code was abrogated by the Civil Code now in force, Sections 1074, 1076 and the fourth transitory provision of the said Spanish Civil Code prescribe that partitions may be rescinded by reason of damage (lesion), exceeding the fourth part; that such rescissory action shall be exercised within four years; and that actions and rights arising before this code became operative, and not exercised shall continue according to the terms recognized by prior legislation, but shall be subject with regard to the exercise, duration and proceedings for enforcing them, to the provisions of the said Spanish Civil Code.

The provisions contained in said Sections 1074, 1076 and in the fourth transitory provision of the Spanish Civil Code are equal to those contained in sections 1041, 1043 and fourth transitory pro-

vision of the Revised Civil Code, without any difference whatever.

30 Moreover, the second paragraph of Sec. 1875 of the said code provided for the rights of persons in whose favor the law creates a mortgage.

X.

It is also important to state that the mortgage law and regulations now in force were promulgated on the 14th and 18th of July, 1893, respectively, to be in force in this Island, and Sections 168, No. 2, 190 and 199 of said Law, and those of the regulations which have reference thereto, prescribe the requisites and formalities which are to be complied with, by the persons in whose favor certain properties are to be reserved.

XI.

We accept the third fact of the plaintiffs' complaint with regard to the date and manner in which the partition proceedings of the estates of Mr. Manuel Garcia Maytin took place and also as to the designation of heirs made in favor of his daughter Mrs. Beatriz Garcia Alós. The partition proceedings of the estates of Mr. Manuel Garcia Maytin were approved by an order entered on the fourth of February, in the year 1887, that is to say three years prior to the time at which the Spanish Civil Code went into effect in this Island of Porto Rico.

XII.

It does not appear from the partition proceedings of the estates of Mr. Manuel Garcia, nor from any of the data which serve as a basis for the answer to the complaint filed, that there existed any relatives within the third degree belonging to the paternal line of

31 Mrs. Beatriz Garcia Alós de Ibarra at the time of her death which happened in the year 1891, and if such relatives existed, it does not appear, either that they took any steps to secure their rights to have the estates reserved in their favor, according to law; it does not appear either, what number of relatives are within the third degree, and how many thereof there are within the second degree and how many within the third degree; neither is there any information whatsoever as to whether at any time a list, inventory or statement of any kind has been made regarding the properties which were to be reserved in favor of the relatives within the third degree, and the value thereof; and finally, it is still unknown whether one of the interested parties, in whose name the complaint which we answer has been filed, is alive or not.

XIII.

The seventh, eighth and ninth facts of the complaint which we answer contain an opposition to the partition proceedings of the inheritance of Mr. Manuel Garcia Maytin which took place in the year 1886 and which were approved by order of a judge on the Fourth of February in the said year 1887. However it appears that from the fourth day of February 1887 until the twelfth of November, 1901, which is the date of the filing of the complaint, not

only four years have elapsed, which is the time fixed in Sec. 1076 of the Spanish Civil Code (Sec. 1043 of the Revised Code) for the opposition to said proceedings, but the length of time elapsed during that period is of seventeen years, nine months and eight days, that is to say, more than four times the term allowed by said section to make the opposition referred to.

Besides this fact, which is plainly evident, we must state also, as facts which are very important:

1st. That the Spanish Civil Code which contains Sec. 811, the prescription of which is not found in any previous Spanish legislation, was not in force in Porto Rico, in the year 1886, when

Mr. Manuel Garcia Maytin died, nor in the year 1887
32 when the partition proceedings of his estate took place; and

2nd. That by the fact that Mr. Manuel Garcia Maytin died, leaving legitimate children Sec. 811 of the said code did not acknowledge, nor does it acknowledge at the present time, any rights whatever to any of the relatives of the latter, within the third degree, not even the right to have properties reserved in their favor, so long as the death of the said descendants does not happen, provided they die leaving no succession and provided there remain any relatives within the degree fixed in Sec. 811 of the said Civil Code.

XIV.

On the other hand, the grounds alleged for the opposition to the said partition proceedings do not appear to be sufficient to produce an efficacious conviction, nor would they stand the simplest analysis, inasmuch as, although it is stated by the plaintiffs that the "appraisal of the properties was capricious and unimportant, and perhaps reduced to less than one half of its true value, to avoid probably the payment of the taxes" and "that the debts did not suffer any change whatever", such conjectures and suppositions cannot be given any weight or consideration whatever, by the court while no plain positive and specific facts be shown which may serve to reinforce and verify them.

And not only these facts which might substantiate the statement of the plaintiffs do not exist, but on the contrary, the partition proceedings themselves show the inaccuracy of the plaintiff's statements.

The estate Santa Rosa appears to have been appraised in the partition proceedings of Mr. Garcia Maytin, in the sum of twenty-two thousand nine hundred and fifteen pesos, in Mexican currency, which amount is equivalent to twenty-one thousand and seven hundred and sixty-nine pesos and twenty-five centavos Spanish
33 currency, or, thirteen thousand and fifty-nine dollars and fifty-five cents. At the present time, the estate Santa Rosa,

which as in former times is adequate for the cultivation of sugar cane and pasturage, has been appraised for the purpose of the payment of taxes to the People of Porto Rico, in the sum of fourteen thousand seven hundred and forty-five dollars, that is to say one thousand six hundred and eighty-five dollars and forty five cents more than in the year 1886.

If we bear in mind that at the present time the estates which are used for the cultivation of sugar cane have a more prosperous future than ten years ago, on account of the increase in the price of said product and the free trade with the ports of the United States we shall come to the conclusion that the estate San Ta Rosa far from being appraised for less than the true value thereof in the partition proceedings which took place in the year 1886, was appraised for a greater amount than the true value of the same at that time.

It is unnecessary to go into an examination of the other appraisements made because the fact stated is sufficient for our purpose and to show the inconsistency of the statements made in the complaint.

XV.

The debts which appear in the partition proceedings of the estates of Mr. Manuel Garcia Mayain amount to twenty-nine thousand seven hundred pesos and twenty-eight centavos, in Mexican currency, for the payment of which sufficient properties were awarded to Mrs. Beatriz Alós de los Angeles. The plaintiffs accept as legitimate debts only the amount of the census and interest thereof, and reject all other debts, just as if they had any right to discuss matters and accounts which occurred prior to the date in which section 811 went into effect said section being that which is involved by them. The amounts or debts rejected are as follows:

34	A credit in favor of Mr. Hilario Cuevillas....	\$2026.66
"	" " " " " Antonio Arana	3000.00
"	" " " " " The Bar Association..	2576.00
"	" " " " " Mrs. Amalia Rufina	
"	" " " " " Valencia	1000.00
"	" " " " " Mr. Andrés Crosas...	12689.62
Expenses caused by the last illness, by the funeral and		
and by the testamentary proceedings.....		1200.00
Total		\$22492.28

Fortunately almost all of the foregoing persons are now alive and residing in this City and at the proper time it will be proven whether such debts were legitimate or not.

We just want to state now that the credit of Mr. Antonio Arana, to which the complaint calls special attention, "by virtue of the fact that the name of a creditor, Mr. José Hernaiz, who appears as such in the judicial inventory of the properties has been substituted for that of Antonio Arana, by the easy method of writing upon the former's name, the name of the latter;" we say that this credit of Mr. Arana appears in a public deed, that the same was, besides, secured by a mortgage and that it was recorded in the books of the former office for recording mortgages, having been transferred in proper time to the modern books of the Registry of Property.

Besides this fact it is to be observed that the amendment of names or the substitution of the name "José Hernaiz for that of Antonio Arana" was mentioned as an error by the notary at the foot of the instrument in which such mistake had happened and it does not

seem to be rare and wonderful, but natural and logic-, that errors
made in a writing be corrected and amended by writing
35 upon the word or phrase mistaken, and not under the same
or at the beginning or end thereof, which course would in-
deed be rare and unheard of.

XVI.

Having stated all the facts necessary to prove that the plaintiffs have no right to oppose the partition proceedings of the estate of Mr. Manuel Garcia Maytin, which took place in the year 1887, for the lack of any prescription which might authorize such opposition by the said plaintiffs, as well as for the reason that if they had had such a right, the same would have been extinguished by prescription; we omit a discussion of the other statements contained in the eighth, ninth and tenth facts of the plaintiffs' complaint, as well as in the thirteenth fact which contains only a list of the properties left at the death of Mr. Manuel Garcia Maytin.

XVII.

Indeed, Mrs. Beatriz Alós de los Angeles has alienated certain properties, after the death of her daughter, Mrs. Beatriz Garcia Alós, of those which were awarded to her in the partition proceedings of the inheritance of her husband Mr. Manuel Garcia Maytin, subject to the payment of the debts of the inheritance, as well as of those which she inherited from her daughter, the said Mrs. Beatriz Garcia Alós, the latter properties being merged with the private properties of Mrs. Beatriz Alós de los Angeles which she acquired by means of her personal business during the years of her widowhood, and they were merged also with those which she acquired as grantee of all the rights belonging to Mr. Lorenzo Ruiz Ibarra, the surviving spouse of the said Mrs. Beatriz Garcia Alós.

The alienations made by Mrs. Beatriz Alós de los Angeles are valid and efficacious inasmuch as the properties having been recorded in the Registry of Property without any limitations what-
35 ever nor any legal mortgage thereon of any kind, the third persons who acquired the same cannot be prejudiced by the negligence and omission of the persons who might have a right to have the said properties reserved in their favor but who failed to exercise their right to make such reservations appear in the Registry of Property.

Mrs. Beatriz Alós de los Angeles herself, who was under no obligation to know whether there existed or not any relatives of her husband within the third degree, when she alienated properties which were legally unincumbered, performed thereby lawful acts, and the contracts executed by her are valid in all their parts and not subject to be re-cinded or abrogated at the present time for the reason that no deceit, threats, violence, error or false consideration was involved in the execution thereof, these being exclusively the defects which might invalidate them, and for the further reason that even if such defects should have occurred in the execution of the said contracts, more than four years have elapsed since the date

of their execution, this being the term allowed by section 1268 of the Civil Code now in force to bring the action for the nullity of contracts.

XVIII.

It is not an accurate statement that when Mrs. Beatriz Alós de los Angeles sold to Mr. José Caldas the house marked with number 75, situated in San Sebastian Street, she merely possessed of the same a part in usufruct, because when she alienated the said house the full ownership thereof belonged to her, and so it appears from the proper record or inscription thereof made in her favor in the Registry of Property.

If Mrs. Beatriz Alós de los Angeles had possessed merely a part, in usufruct of the said house, the naked property right upon the same ought to have been recorded in favor of the owner or owners thereof, which of course did not happen. On the contrary the best evidence of that fact that the naked property right as well as the usufruct, both merged, belonged to Mrs. Beatriz Alós de los Angeles, is shown by the fact that the title or deed of Mr. Caldas was recorded without any defects whatever in the Registry of Property and that the Succession of the said Mr. Caldas transferred in the year 1903 the said property to Mr. José Carazo, by an effective title which has also been recorded in the Registry of Property without any reservations or defects whatever.

XIX.

The last paragraph of the thirteenth fact, in connection with the twelfth fact, of the complaint, relating to a prescription of ownership in favor of the plaintiffs herein by virtue of the approval made in 1884 of certain proceedings instituted for recording the possession of the estate Santa Rosa, is entirely unintelligible to us, as we are unable to understand not only the statement made in the said paragraph, but even that which was intended to be made. If the plaintiffs' rights and claims are based according to their own statements, upon the facts that Mrs. Beatriz Alós de los Angeles inherited from her daughter Mrs. Beatriz García Alós, who died in the year 1892, certain properties which the latter inherited from her father Mr. Manuel García Maytín, who died in the year 1886, and which, in the plaintiffs' opinion should have been reserved in their favor, we fail to see what connection may exist between such a juridical condition and the fact of the approval made in 1884, of certain proceedings instituted for recording the possession of the estate Santa Rosa and the statements made to the effect that the word "property" includes possession as well as all other rights belonging to Mr. Manuel García Maytín.

XX.

The petition made in the prayer of the complaint under number I cannot meet with any success whatever, based as it is on facts which are inaccurate, tending to state that Mrs. Beatriz Alós has disposed by a testament of certain properties which did not belong to her

when it is a fact that in the said testament no reference is made as to any property disposed of by the said testatrix.

Such being the case the action brought for the annulment of the said testament or will can never succeed.

XXI.

The petition made in the prayer of the complaint made under number two, is in open contradiction with the following petitions of the same prayer, because in said number two, the court is requested to render judgment holding "that the properties inherited by Mrs. Beatriz Alós from her daughter Mrs. Beatriz Garcia Alós who inherited the same from her father Mr. Manuel Garcia Maytin, belong to Mrs. Monserrate Garcia Maytin and to Mrs. Dominga Garcia Maytin and Mr. Angel Garcia Maytin; the said properties being a coownership appraised in the value of seven thousand eight hundred and twenty-two pesos and twenty-two centavos, in the estate Santa Rosa; the house number 75, situated in San Sebastian Street; eight carts and three plows" while in the petition made under number 3 and following the court is requested to hold that the partition proceedings of the estates of Mr. Garcia Maytin are null and void; whereby it is readily seen, at first sight, that if the petition prayed for under number two should be granted, those requested under number three and following cannot be granted; and that, on the contrary, if the latter are granted, that is to say, if the partition proceedings of the estates of Mr. Garcia Maytin are held to be null and void, the

39 petition number two cannot be granted because the inheritance of Mrs. Beatriz Garcia Alós will not be constituted only by the properties stated in the said number two.

XXII.

I deny every fact stated in the complaint which may gainsay those stated in this answer, and I allege the exception of lack of action on the part of the plaintiffs to obtain judgment in favor of their complaint, as presented.

I pray the court to be pleased to consider that the complaint has been answered in so far as Mrs. Beatriz de los Angeles the widow of Mr. Alós, is concerned and to render judgment at the proper time dismissing the complaint as presented, and imposing the costs upon the plaintiffs.

San Juan, Porto Rico, December 20th, 1904.

WENCESLAO BOSCH.

In the District Court for the Judicial District of San Juan, Porto Rico.

MONSERRATE and DOMINGA GARCIA MAYTIN and ANA MARIES Y Davila, the Latter as Representative of Her Husband, Mr. Angel Garcia Maytin, Plaintiffs,

vs.

RICARDO VELA, THE HEIRS OF BEATRIZ ALÓS, SUCCESSION OF CALDAS y Caldas, Ramon Valdes, and Other Unknown Persons, Defendants.

Action for the Annulment of a Will and of Certain Contracts and for the Recovery of Properties.

Now comes before the court, in the above entitled case the
40 Succession of Mr. José Caldas y Caldas, constituted by Mrs. Angela Caldas y Palmor, Mrs. Carolina Petra Caldas y Palma, and Mr. Francisco Caldas y Palma, through their attorney Wenceslao Bosch, and in the most proper manner state: that my clients having been summoned by a notice published in the papers come now to make their answer to the complaint, and pray the court to be pleased to render judgment at the proper time, dismissing the complaint in so far as my clients are concerned, and to impose the costs upon the party which presented the same.

In compliance with Sec. 111 of the Code of Civil Procedure, I make this answer, stating the following

Facts.

I.

Mrs. Beatriz Garcia Alós, who was married to Mr. Lorenzo Ruiz Ibarra, died in the town of Bayamon on the 28th of September 1891, and the said Mrs. Beatriz Garcia Alos was the owner of a house marked with the number 75, and situated in San Sebastian Street, in this City.

II.

On the 23rd of January, 1892, Mrs. Beatriz Alós y de los Angeles, the surviving spouse of Mr. Manuel Garcia Maytin, and the mother of Mrs. Beatriz Garcia Alós, applied to the Court of First Instance of the Cathedral District in this City requesting to be acknowledged as heir abintestate of her daughter, above mentioned, who had died leaving no descendants; the said court, after hearing the proper evidence granted the aforesaid petition, and entered an order on the 1st of July 1892, whereby Mrs. Beatriz Alos de los Angeles was acknowledged as heir abintestate of her legitimate daughter, Mrs.

Beatriz Garcia Alós, reserving in favor of Mr. Lorenzo Ruiz
41 Ibarra, the surviving spouse of the latter, the legal portion which belonged to him in the inheritance left by his deceased wife, in the form and for the amount provided for in Sect. 836 of the Civil Code.

III.

It must be stated as an important fact of this answer and of those which might be made later on, by the other defendants in this suit, that the house marked with number seventy-five of San Sebastian Street, was encumbered with a mortgage for the sum of three thousand pesos constituted in favor of Mr. Antonio Arana, and the said mortgage which had been recorded in the ancient books of the office for recording mortgages, was already due at the time of the death of Mr. Manuel Garcia Maytin, which happened on the 6th of March, 1886, the said mortgage having been transferred to the modern books of the Registry of Property, in the year 1888, that is to say, after the occurrence of the death of Mr. Manuel Garcia Maytin, and prior to the death of Mrs. Beatriz Garcia Alós de Ibarra.

IV.

Mrs Beatriz Alós de los Angeles entered into a contract with Mr. Lorenzo Ruiz Ibarra, the surviving spouse of Mrs. Beatriz Garcia, by virtue of which the latter ceded to the former all rights and actions belonging to him as such surviving spouse in the inheritance left by his deceased wife Mrs. Beatriz Garcia Alós, and which had been reserved to him by the aforesaid order of July 1st, 1892; said cession or alienation having been made for the sum of eight thousand pesos, in Mexican currency, which the grantee paid to the grantor.

42

V.

Mrs. Beatriz Alós de los Angeles, by virtue of the characters of heir of her daughter and grantee of the rights of the surviving spouse of the latter, caused all the properties which belonged to her daughter, the said Mrs. Beatriz Garcia Alós, to be recorded in her favor, without any defects whatsoever, in the Registry of Property of this City, no opposition having been made by any one with regard to the inscription or record thereof without defects or reservations of whatever kind. One of the properties recorded in favor of Mrs. Beatriz Alós de los Angeles was the house number seventy-five of San Sebastian Street in this City.

VI.

By a Royal decree dated the 31st of July, 1889, the Spanish Civil Code was promulgated to be in force in Porto Rico, and the same was in force until the 30th of June, 1902; the second paragraph of Sect. 1875 thereof (which is equivalent to the second paragraph of Sect. 1776 of the Civil Code now in force) reads as follows: "The persons in whose favor the law creates a mortgage shall have no other right than to demand the execution and entry or inscription of the instrument in which the mortgage may be constituted."

VII.

The mortgage law now in force was promulgated on the 14th of July, 1893 to be in force in this Island, and the regulations for the execution thereof were approved by a Royal Decree dated the eighteenth of the same month and year, and by Sect. 168, No. 2, of the

said Law, a legal mortgage is created in favor of the relatives referred to in Sect. 811 of the Spanish Civil Code (Sect. 799 of the Civil Code now in force in this Island.)

Section 168 brought about a real change in the matter of legal mortgages by virtue of the prescription contained in Sec. 811 of the Civil Code, and it could not be otherwise if we bear in mind:

1st. That the lineage (tronicalidad) created by the said Sec. 811 had no antecedent whatever in the Spanish legislation prior to the Civil Code which was promulgated in the year 1889; and

2nd. That the Mortgage Law which was abrogated by that which is now in force, was promulgated in the year 1879, that is to say, eleven years prior to the date on which the said Civil Code went into effect.

VIII.

Sec. 199 of the Mortgage Law of 1893, and sections 190 and following thereof, which are equivalent thereto prescribe what rights shall be exercised, and what proceedings and requisites shall be observed by the persons who consider themselves as having a right to a legal mortgage to secure certain properties in their favor, in order that said mortgage may be known by every person trying to contract upon the same properties.

IX.

At the time at which the death of Mrs. Beatriz Garcia Alós took place, the Spanish Civil Code was in force in Porto Rico, and the mortgage law and the regulations above referred to, were promulgated two years thereafter, and during all that period of time which runs nearly fourteen years that is to say, from 1891 until 1904, the plaintiffs herein have taken no steps whatever either to enjoy the rights secured by Sec. 811 of the Civil Code now resorted to by them, or even to show that they were still among the living beings of the world.

44

X.

Mrs. Monserrate Garcia Maytin, Mrs. Dominga Garcia Maytin and Mr. Angel Garcia Maytin have not claimed for fourteen years any right whatever to the properties possessed by Mrs. Beatriz Alós; they have never alleged that Mrs. Beatriz Alós de los Angeles possessed merely a part in usufruct upon the properties; they have not made any inventory or list of the properties; they have not requested the constitution of any mortgage, nor have they applied to the registry of property or to any Tribunal, Judge or Court to demand the constitution of a mortgage on the terms provided for in Sec. 199 of the Mortgage law in connection with Sec. 1875 of the former Civil Code and Sec. 1776 of the Civil Code now in force; but on the contrary, they have suffered Mrs. Beatriz Alós de los Angeles to remain in peaceful possession and full ownership of her property rights, under a legal title recorded in the Registry of Property.

XI.

The foregoing facts lead us to answer specifically the claim made against the Succession of Mr. José Caldas, this being our duty at the present time, and therefore, we certainly acknowledge the fact that Mrs. Beatriz Alós de los Angeles sold to Mr. José Caldas, in the month of May, 1895, the house marked with number 75 of San Sebastian Street, in this City; that the said Mr. Caldas, went to the Registry of Property in order to inquire whether or not the said estate was free from encumbrances; whether there was any mortgage constituted upon the same or not and as nothing appeared therein which might prevent the purchase of the said estate, he acquired the same by virtue of a legal title, which was also recorded without any defects whatever in the Registry of Property.

45

XIII.

Mr. Caldas not only acquired the said estates under a valid title, but he possessed the same for eight years, that is to say, from the year 1895 until the year 1903, without the opposition of any one, and finally he alienated the same in the latter year above mentioned to Mr. José Carazo and said estate is recorded in the Registry of Property in favor of the said Mr. Carazo since the month of September or October of the said year 1903.

XIV.

The prescription that "contracts executed by a person who, according to the Registry, has a right thereto, shall not be invalidated with regard to third persons after they have once been recorded, although later the right of the person executing them is annulled or determined by virtue of a prior deed not recorded, or for reasons which do not appear from the Registry" cannot be ignored or unknown, and, therefore, as no reasons of whatever kind, whether clear doubtful or obscure reasons, appear from the Registry which might render that title ineffectual, it is plain that the suit brought against the Succession of Mr. Caldas is groundless, and more than that, entirely unsound.

XV.

Besides the reasons given to render the complaint unsuccessful as against my clients, there is a plain lack of action in bringing the suit against the Succession of Mr. Caldas to recover from said succession the house number 75 of San Sebastian Street in this City, for the reason that this house does no longer belong to the Succession of Mr. Jose Caldas, who alienated the same more than one year prior to the filing of the suit. If actions in ejectment lie in favor of those who are deemed to have property rights in certain
46 *in certain* estates it seems that it should be a necessary requisite thereof that the estates sought to be recovered be found in the possession of the person against whom the ejectment suit is brought. Perhaps it might have happened that the succession of Mr. Caldas would have had to appear in this case if the plaintiff had brought the ejectment suit against the proper party,

that is to say, against the owner of the estate at the present time, and the latter would have claimed his right to have the vendor summoned for eviction, but it cannot be imagined that it is sought to obtain from the Court an order directing the Succession of Mr. José Caldas to execute certain facts which are beyond reach of their will, as to compel them to return that which they do not possess, nor do they know whether they can acquire the same.

XVI.

I deny the facts stated in the complaint in so far as they may gainsay those stated in this answer.

By virtue of all of the foregoing facts, I allege against the complaint the exception of lack of action on the part of the plaintiffs; and I pray the court to be pleased to consider that the complaint has been answered in so far as this party is concerned and to render judgment at the proper time, after hearing the evidence, dismissing the complaint with regard to my clients and to impose the costs upon the plaintiffs.

San Juan, Porto Rico, December 9th, 1904.

WENCESLAO BOSCH.

47 In the District Court for the Judicial District of San Juan,
Porto Rico.

MONSERRATE and DOMINGA GARCIA MAYTIN and ANA MARDEN Y Davila, the Latter as Representative of Her Husband, Mr. Angel Garcia Maytin, Plaintiffs,

vs.

RICARDO VELA, THE HEIRS OF BEATRIZ ALÓS, SUCCESSION OF CALDAS y Caldas, Ramon Valdes and Other Unknown Persons, Defendants.

Action for the Annulment of a Will and of Certain Contracts and for the Recovery of Properties.

Now comes before the Court, in the above entitled case, the Succession of Mr. José Caldas y Caldas, constituted by Mrs. Angela Caldas y Palma, Mrs. Carolina Petra Caldas y Palma and Mr. Francisco Caldas y Palma, through their attorney Wenceslao Bosch, and in the most proper manner state that my clients having been summoned for eviction by Mr. José Canazo, make their answer to the complaint stating the following.

Facts.

I.

The facts stated under numbers I to XIV in the answer to the complaint made by this party under date of the 9th of December last, are hereby reproduced.

II.

Mr. Angel Garcia Maytin, who appears to be one of the plaintiffs in this suit, is an imaginary being, who does not exist among the living beings of the world, nor did he exist at the time of the filing of the complaint in this case.

III.

48 As Mr. Angel Garcia Maytin does not exist it is not possible that he should have authorized any one to file the complaint in this suit.

IV.

The existence of Mrs. Monserrate Garcia Maytin, and Mrs. Dominga Garcia Maytin has not been proven, nor has it been proven that they have authorized any one for the filing of the complaint which we answer. Furthermore we have reasons to suspect that the said suit has probably been brought against the will of some of the persons interested therein.

V.

The action brought by the plaintiffs as appears from the complaint itself, is an action strictly personal, brought in favor of relatives within the third degree, and Mrs. Ana Marien Dávila cannot claim to be a relative within the said degree.

By virtue of the facts stated

I pray the court to be pleased to consider that the complaint has been answered with regard to the succession of Mr. José Caldas, which had been summoned for eviction by Mr. José Carazo, and to render judgment at the proper time acquitting thereby the Succession which I represent and to impose the costs upon the plaintiffs.

San Juan, Porto Rico, January 18th, 1905.

WENCESLAO BOSCH.

Filed with the proper copies on this 19th day of January, 1905.
I certify.

JOSÉ E. FIGUERAS,

Secretary.

49 In the District Court for the Judicial District of San Juan,
Porto Rico.

MANSERRATE and DOMINGA GARCIA MAYTIN and ANA MARIEN Y Davila, the Latter as Representative of Her Husband, Mr. Angel Garcia Maytin, Plaintiffs,

vs.

RICARDO VELA, THE HEIRS OF BEATRIZ ALÓS, SUCCESSION OF CALDAS y Caldas, Ramón Valdés and Other Unknown Persons, Defendants.

Action for the Nullity of a Will and of Certain Contracts and for the Recovery of Properties.

Now comes before the court Mr. Jose de Quixano, in his own right and as father with authority over his legitimate and minor children, named Miss Maria Quixano y Alós, Mr. Luis and Mr. Manuel Quixano y Alós through his Attorneys Acuña & Mendez, and in the most proper manner answer the complaint, stating the following

Facts.

I.

Mrs. Beatriz Alós de los Angeles, the surviving spouse of Mr. Garcia Maytin, executed her will on the 9th of September, 1904, before Mr. Tomas Valdejuli, a Notary Public, and by virtue of said will she made the following bequests, to wit: \$1000, to Mr. José Quixano Leizaur; \$300., to Mrs. Guadalupe Garcia y Quiara; she bequeathed half of her inheritance to her nephews Mr. Luis and Mr. Manuel Quixano y Alós and to her niece Miss Maria Quixano y Alós (after deducting from the same the amount of the aforesaid bequests and the payment of the burial and funeral expenses of the
50 testatrix) said half to be distributed among the said legatees at the rate of two parts thereof for Miss Maria Quixano y Alós and one part thereof for each of the said Luis and Manuel Quixano y Alós. The Testatrix instituted her legitimate mother Mrs. Beatriz de los Angeles as her heir of the remaining half of her inheritance, and she acquired thereby only that part which could not be disputed to her, that is to say, that part which the law reserves for her as a legal portion.

Therefore, the first and sixth facts stated in the plaintiff's complaint are entirely inaccurate in so far as they state that Mrs. Beatriz Alós de los Angeles has disposed by her last will, of properties belonging to the plaintiffs, because no specification is made in the said will or testament as to the properties which constitute the inheritance which Mrs. Beatriz left to her heirs:

II.

We accept the second fact stated in the plaintiff's complaint, which states that Mrs. Beatriz Alós was acknowledged by an order entered

on the first of July, 1892, by the Court of First Instance of the Cathedral District in this City, as the sole and universal heir abintestate of her daughter Mrs. Beatriz Garcia, without prejudice to third parties; and expressly reserving in favor of Mr. Lorenzo Ruiz Ibarra, the surviving spouse of Mrs. Beatriz Garcia, the legal portion which belonged to him in the inheritance left by his legitimate wife, in the form and for the amount provided for in Sec. 836 of the Civil Code.

III.

The properties which Mrs. Beatriz Garcia Alós, the wife of Mr. Ibarra, had inherited from her father Mr. Manuel Garcia Maytin, were the following:

III.

51 A. A coownership appraised in the value of \$7822.22 in Mexican currency, in the estate "Santa Rosa", situated in the ward of Juan Sanchez, in the jurisdiction of Bayamon, which contains eight hundred cuerdas of land, and the total value of which is \$22915.00 in Mexican currency.

B. A house marked with the number 75, situated in San Sebastian Street of this City, which was appraised at that time in the sum of five thousand pesos in Mexican currency.

C. Eight carts which were appraised in the sum of 160 pesos.

D. Three plows appraised at \$33.00 pesos.

Therefore, the inheritance received by Mrs. Beatriz Garcia Alós amounted to the sum of thirteen thousand and eighteen pesos and twenty-two centavos, in Mexican currency, and so it appears in the partition proceedings which took place on the 6th of December 1886, when the heir, Mrs. Beatriz Garcia Alós was seventeen years old. Said partition proceedings were not opposed by the said minor after her marriage with Mr. Ruiz Ibarra, although she was at that time twenty-two years old, nor were they opposed by her mother and heir Mrs. Beatriz Alós y de los Angeles, nor even by any of the plaintiffs in this suit during a period of time which runs nearly eighteen years, that is to say, from December 1886 until November 1904.

IV.

52 After the death of Mrs. Beatriz Garcia Alós, and after the designation of heirs had been made in the manner stated in the foregoing fact, Mrs. Beatriz Alós de los Angeles entered into a contract with Mr. Lorenzo Ruiz Ibarra, by virtue of which the latter ceded to the former all rights and actions belonging to him as surviving spouse in the inheritance left by his deceased wife the said Mrs. Beatriz Garcia Alós, said cession having been made for the sum of eight thousand pesos, in Mexican currency, which the grantee paid to the grantor.

V.

The facts that in the year 1887 the inheritance received by Mrs. Beatriz Garcia Alós from her father Mr. Manuel Garcia Maytin amounted to the sum of \$13018.22 centavos in Mexican currency

and that in the year 1891, when the death of Mrs. Beatriz García Alós occurred the usufruct of one-third of the estates left by the latter had been alienated for the sum of 88000 pesos, in Mexican currency, plainly show that the estates inherited by Mrs. Beatriz Alós de los Angeles from her daughter Mrs. Beatriz García Alós were not only those which the latter inherited from her father Mr. Manuel García Maytín, but these estates and some others which the said Mrs. Beatriz García Alós did not acquire for a good consideration from her father, but which she acquired by virtue of other titles during the period of time which runs from the year 1886 to 1891, which were the years in which Mr. Manuel García Maytín and his daughter Mrs. Beatriz García Alós, respectively, died.

VI.

As no inventory was made at the time of the death of Mrs. Beatriz García Alós of all her properties, and as no specification was made of the properties which had been acquired by her for a good consideration from her father Mr. Manuel García Maytín, and as no person claiming a right to have the properties reserved in his favor made any request whatsoever regarding this matter, the said properties were wholly transferred to her mother Mrs. Beatriz Alós de los Angeles, a real merger of properties being caused thereby, which was more important and apparent from the moment in which Mrs. Beatriz Alós de los Angeles acquired from Mr. Lorenzo Ruiz Ibarra the rights belonging to him as surviving spouse.

Therefore, when Mrs. Beatriz García Alós died in the year 1892 and her mother Mrs. Beatriz Alós de los Angeles acquired her estates as her heir abintestate, there was in regard to her, a merger of properties composed of properties of her own; of properties which the said daughter had inherited from her father Mr. Manuel García Maytín, of properties acquired by the said daughter during the years from 1886 to 1892, and finally, of the usufruct acquired by Mrs. Beatriz Alós from Mr. Lorenzo Ruiz Ibarra.

VII.

The statement made in the fourth fact of the plaintiffs' complaint to the effect that Mrs. Beatriz Alós de los Angeles inherited from her daughter the same estates which the latter had inherited from her father, cannot be accepted because the plaintiffs having acknowledged in the second fact of their complaint that Mrs. Beatriz García Alós married Mr. Ruiz Ibarra and that by an order entered on the 1st of July 1902 the right provided for in Sec. 836 of the Spanish Civil Code was reserved to the latter, that is to say, the usufruct of one-third of the inheritance, it is entirely impossible for Mrs. Beatriz Alós de los Angeles to have inherited the same estates which Mrs. Beatriz García inherited from her father Mr. Manuel García Maytín.

VIII.

It is to be observed that during the twelve years and four months which elapsed from the date of the order entered on July 1st, 1892,

until the death of Mrs. Beatriz Alós de los Angeles, which occurred on the eighteenth of September last, nobody opposed the designation of heirs made in the form stated nor any opposition was made, either, to the inscription or record in the Registry of Property of the full ownership of the estates inherited by Mrs. Alós de los Angeles which full ownership belonged to her after she had acquired from Mr. Lorenzo Ruiz Ibarra all the rights belonging to him as surviving spouse of his deceased wife which rights were reserved to him by the aforesaid order of July 1st.

IX.

It must be stated as an important fact, that by a Royal Decree of the Spanish Government, dated the 31st of July, 1889, the Spanish Civil Code was promulgated to be in force in this Island, and the same was in force until the 30th of June 1902, on which day said code was abrogated by the Civil Code now in force. Sections 1074, 1076 and the fourth transitory provision of the said Spanish Civil Code prescribe that partitions may be rescinded by reason of damage (lesion), exceeding the fourth part; that such rescissory action shall be exercised within four years; and that actions and rights arising before this code became operative, and not exercised, shall continue according to the terms recognized by prior legislation, but shall be subject, with regard to the exercise, duration and proceedings for enforcing them, to the provisions of the said Spanish Civil Code.

The provisions contained in said sections 1074, 1076 and in the fourth transitory provision of the Spanish Civil Code are equal to those contained in Sections 1041, 1043 and fourth transitory provision of the Revised Civil Code without any difference whatever. Moreover, the second paragraph of Sec. 1875 of the said code provides for the rights of persons in whose favor the law creates a mortgage.

X.

It is also important to state that the Mortgage Law and Regulations now in force were promulgated on the 14th and 18th of July, 1893, respectively, to be in force in this Island, and Sections 168, No. 2, 190 and 199 of said law, and those of the regulations which have reference thereto, prescribe the requisites and formalities which are to be complied with, by the persons in whose favor certain properties are to be reserved.

XI.

We accept the third fact of the plaintiff's complaint with regard to the date and manner in which the partition proceedings of the estates of Mr. Manuel Garcia Maytin took place, and also as to the designation of heirs made in favor of his daughter Mrs. Beatriz Garcia Alos. The partition proceedings of the estates of Mr. Manuel Garcia Maytin were approved by an order entered on the fourth of February in the year 1887, that is to say, three years prior to the time at which the Spanish Civil Code went into effect in this Island of Porto Rico.

XII.

It does not appear from the partition proceedings of the estates of Mr. Manuel García nor from any of the data which serve as a basis for the answer to the complaint filed, that there existed any relatives within the third degree belonging to the paternal line of Mrs. Beatriz García Alos de Ibarra at the time of her death which happened in the year 1891, and if such relatives existed it does not appear, either, that they took any steps to secure their rights to have the estates reserved in their favor, according to law; it does not appear, either, what number of relatives are within the third degree and how many thereof are within the second degree and how many within the third degree; neither is there any information whatever as to whether at any time a list, inventory or statement of any kind has been made regarding the properties which were to be reserved in favor of the relatives within the third degree, and the value thereof; and finally, it is still unknown whether one of the interested parties, in whose name the complaint which we answer has been filed, is alive or not.

XIII.

The seventh, eighth and ninth facts of the complaint which we answer contain an opposition to the partition proceedings of the inheritance of Mr. Manuel García Maytín which took place in the year 1886 and which were approved by order of a Judge on the fourth of February, in the said year 1887. However, it appears that from the fourth day of February, 1887, until the twelfth of November 1904, which is the date of the filing of the complaint, not only four years have elapsed, which is the time fixed in Sec. 1076 of the Spanish Civil Code (Sec. 1043 of the Revised Code) for the opposition to said proceedings, but the length of time elapsed during that period is of seventeen years, nine months and eight days, that is to say, more than four times the term allowed by said Section to make the opposition referred to.

Besides this fact which is plainly evident, we must state also, as facts which are very important:

1st. That the Spanish Civil Code, which contains Sec. 811, the prescription of which is not found in any previous Spanish legislation, was not in force in Porto Rico in the year 1886, when Mr. Manuel García Maytín died, nor in the year 1887 when the partition proceedings of his estate took place; and

2nd. That by the fact that Mr. Manuel García Maytín died, leaving legitimate children, Sec. 811 of the said Code did not acknowledge, nor does it acknowledge at the present time, any rights whatever to any of the relatives of the latter, within the third degree, not even the right to have properties reserved in their favor, so long as the death of the said descendants does not happen, provided they die leaving no succession and provided there remain any relatives within the degree fixed in Sec. 811 of the said Civil Code.

XIV.

On the other hand, the grounds alleged for the opposition to the said partition proceedings do not appear to be sufficient to produce an efficacious conviction nor would they stand the simplest analysis, in as much as, although it is stated by the plaintiffs that the "Appraisalment of the properties was capricious and unimportant, and perhaps reduced to less than one half of its true value, to avoid probably the payment of the taxes" and "that the debts did not suffer any change whatever," such conjectures and suppositions cannot be given any weight or consideration whatever, by the court while no plain, positive and specific facts be shown which may serve to reinforce and verify them.

And not only these facts which might substantiate the statement of the plaintiffs do not exist, but, on the contrary, the partition proceedings themselves show the inaccuracy of the plaintiff's statements.

58 The estate Santa Rosa appears to have been appraised in the partition proceedings of Mr. Garcia Maytin in the sum of twenty-two thousand nine hundred and fifteen pesos, in Mexican currency, which amount is equivalent to twenty-one thousand seven hundred and sixty-nine pesos and twenty-five centavos, Spanish currency, or, thirteen thousand and fifty-nine dollars and fifty-five cents. At the present time the estates Santa Rosa which, as in former times is adequate for the cultivation of sugar cane and pasturage, has been appraised for the purpose of the payment of taxes to the People of Porto Rico, in the sum of fourteen thousand seven hundred and forty-five dollars, that is to say, one thousand six hundred and eighty-five dollars and forty-five cents more than in the year 1886.

If we bear in mind that at the present time the estates which are used for the cultivation of sugar can have a more prosperous future than ten years ago, on account of the increase in the price of said product and the free trade with the parts of the United States, we shall come to the conclusion that the estate Santa Rosa, far from being appraised for less than the true value thereof in the partition proceedings which took place in the year 1886, was appraised for a greater amount than the true value of the same at that time.

It is unnecessary to go into an examination of the other appraisements made because the fact stated is sufficient for our purpose and to show the inconsistency of the statements made in the complaint.

XV.

59 The debts which appear in the partition proceedings of the estates of Mr. Manuel Garcia Maytin amount to twenty-nine thousand seven hundred pesos, and twenty-eight centavos, in Mexican currency, for the payment of which sufficient properties were awarded to Mrs. Beatriz Alós de los Angeles. The plaintiffs accept as legitimate debts only the amount of the census and interest thereof, and reject all other debts, just as if they had any right to discuss matters and accounts which occurred prior to the date on

which Section 811 went into effect, said section being that which is invoked by them. The amounts or debts rejected are as follows:

A credit in favor of Mr. Hilario Cuevillas.....	\$2026.66
" " " " " Antonio Arana.....	3000.00
" " " " " The Bar Association.....	2576.00
" " " " " Mrs. Amalia Rufina Valencia.....	1000.00
" " " " " Mr. Andres Crosas.....	12689.62
Expenses caused by the last illness, by the funeral and the testamentary proceedings.....	1200.00
Total	\$22492.28

Fortunately almost all of the foregoing persons are now alive and residing in this City, and at the proper time it will be proven whether such debts were legitimate or not.

We just want to state now that the credit of Mr. Antonio Arana, to which the complaint calls special attention, "by virtue of the fact that the name of a creditor, Mr. José Hernaiz, who appears as such in the judicial inventory of the properties, has been substituted for that of Antonio Arana, by the easy method of writing upon the former's name, the name of the latter;" we say that this credit of Mr. Arana appears in a public deed, that the same was besides secured by a mortgage and that it was recorded in the books
60 of the former office for recording mortgages, having been transferred in proper time, to the modern books of the Registry of Property.

Besides this fact it is to be observed that the amendment of names, or the substitution of the name José Hernaiz for that of Antonio Arana" was mentioned as an error by the notary at the foot of the instrument in which such mistake had happened, and it does not seem to be rare and wonderful, but natural and logical that errors made in a writing be corrected and amended by writing upon the word or phrase mistaken and not under the same or at the beginning or end thereof, which course would indeed be rare and unheard of.

XVI.

Having stated all the facts necessary to prove that the plaintiffs have no right to oppose the partition proceedings of the estates of Mr. Manuel Garcia Maytin, which took place in the year 1887, for the lack of any prescription which might authorize such opposition by the said plaintiffs as well as for the reason that if they had had such a right the same would have been extinguished by prescription; we omit a discussion of the other statements contained in the eighth, ninth and tenth facts of the plaintiffs' complaint, as well as in the thirteenth fact which contains only a list of the properties left at the death of Mr. Manuel Garcia Maytin.

XVII.

Indeed, Mrs. Beatriz Alós de los Angeles has alienated certain properties, after the death of her daughter, Mrs. Beatriz Garcia Alós.

of those which were awarded to her in the partition proceedings of the inheritance of her husband Mr. Manuel García Maytín, subjeet to the payment of the debts of the inheritance, as well as of those which she inherited from her daughter, the said Mrs. Beatriz García Alós the latter properties being merged with the private properties of Mrs. Beatriz Alós de los Angeles which she acquired by means of her personal business during the years of her widowhood, and they were merged also with those which she acquired as grantee of all the rights belonging to Mr. Lorenzo Ruiz Ibarra, the surviving spouse of the said Mrs. Beatriz García Alós.

The alienations made by Mrs. Beatriz Alós de los Angeles are valid and efficacious, inasmuch as the properties having been recorded in the Registry of Property without any limitations whatever nor any legal mortgage thereon of any kind, the third persons who acquired the same cannot be prejudiced by the negligence and omission of the persons who might have a right to have the said properties reserved in their favor, but who failed to exercise their right to make such reservation appear in the Registry of Property.

Mrs. Beatriz Alós de los Angeles, herself who was under no obligation to know whether there existed or not any relatives of her husband within the third degree, when she alienated properties which were legally unencumbered, performed thereby lawful acts and the contracts executed by her are valid in all their parts, and not subject to be rescinded or abrogated at the present time for the reason that no deceit, threat, violence, error or false consideration was involved in the execution thereof, these being exclusively the defects which might invalidate them, and for the further reason, that even if such defects should have occurred in the execution of the said contracts, more than four years have elapsed since the date of their

62 execution, this being the term allowed by Section 1268 of the Civil Code now in force to bring the action for nullity of contracts.

XVIII.

It is not an accurate statement that when Mrs. Beatriz Alós de los Angeles sold to Mr. José Caldas the house marked with number 75, situated in San Sebastian Street, she merely possessed of the same a part in usufruct, because when she alienated the said house the full ownership thereof belonged to her, and so it appears from the proper record or inscription thereof made in her favor in the Registry of Property.

If Mrs. Beatriz Alós de los Angeles had possessed merely a part, in usufruct, of the said house, the naked property right upon the same ought to have been recorded in favor of the owner or owners thereof, which of course did not happen. On the contrary, the best evidence of the fact that the naked property right as well as the usufruct, both merged belonged to Mrs. Beatriz Alós de los Angeles is shown by the fact that the title or deed of Mr. Caldas was recorded without any defects whatever in the Registry of Property and that the Succession of the said Mr. Caldas transferred in the year 1903 the said property to Mr. José Carazo, by an effective title which

has also been recorded in the Registry of Property without any reservations or defects whatever.

XIX.

The last paragraph of the thirteenth fact, in connection with the twelfth fact, of the complaint, relating to a prescription of ownership in favor of the plaintiffs herein by virtue of the approval made in 1884 of certain proceedings instituted for recording the possession of the estate "Santa Rosa," is entirely unintelligible to us as we are unable to understand not only the statement made in the said paragraph, but even that which was intended to be made. If the plaintiffs' rights and claims are based, according to their own statements, upon the fact that Mrs. Beatriz Alos de los Angeles inherited from her daughter Mrs. Beatriz Garcia Alos, who died in the year 1892, certain properties which the latter inherited from her father Mr. Manuel Garcia Maytin, who died in the year 1886, and which, in the plaintiffs' opinion, should have been reserved in their favor, we fail to see what connection may exist between such a juridical condition and the fact of the approval made in 1884 of certain proceedings instituted for recording the possession of the estate "Santa Rosa," and the statement made to the effect that the word "property" includes possession as well as all other rights belonging to Mr. Manuel Garcia Maytin.

63

XX.

The petition made in the prayer of the complaint under number one, cannot meet with any success whatever, based as it is on facts which are inaccurate, tending to state that Mrs. Beatriz Alos has disposed by a testament of certain properties which did not belong to her when it is a fact that in the said testament no reference is made to any property disposed of by the said testatrix.

Such being the case, the action brought for the annulment of the said testament or will can never succeed.

XXI.

The petition made in the prayer of the complaint, under number two, is in open contradiction to the following petitions of the same prayer, because in said number two, the court is requested to render judgment holding "that the properties inherited by Mrs.

64 Beatriz Alos from her daughter Mrs. Beatriz Garcia Alos, who inherited the same from her father, Mr. Manuel Garcia Maytin, belong to Mrs. Monserrate and Mrs. Dominga Garcia Maytin and to Mr. Angel Garcia Maytin; the said properties being a coownership appraised in the value of seven thousand eight hundred and twenty-two pesos and twenty-two centavos, in the estate Santa Rosa; the house number 75, situated in San Sebastian Street; eight carts and three plows" while in the petition made under number 3 and following the court is requested to hold that the partition proceedings of the estates of Mr. Garcia Maytin are null and void; whereby it is readily seen, at first sight, that if the petition prayed for under number two should be granted, those requested under number three

and following cannot be granted; and that, on the contrary, if the latter are granted, that is to say, if the partition proceedings of the estates of Mr. Garcia Maytin are held to be null and void, the petition number two cannot be granted because the inheritance of Mrs. Beatriz Garcia Alos will not be constituted only by the properties stated in the said number two.

XXII.

I deny every fact stated in the complaint which may gainsay those stated in this answer, and allege the exception of want of capacity to sue and lack of action on the part of the plaintiffs to obtain judgment in favor of their claim.

By virtue of the foregoing facts.

I pray the court to be pleased to consider that the complaint has been answered, in so far as Mr. Beatriz de los Angeles, the widow of Mr. Alós is concerned and to render judgment at the proper time dismissing the complaint as presented, and imposing the costs upon the plaintiffs.

65 San Juan, Porto Rico, May 11th, 1905.

ACUÑA & MENDEZ,

Attorneys for Quisano Alos, Defendants.

66

Judgment.

No. 212.

MONSERRATE and DOMINGA GARCIA MAYTIN et al.

vs.

RICARDO VELA et al.

Action for the Nullity of a Will and of Certain Contracts and for the Recovery of Properties.

This case coming on to be heard on the 3rd of November, 1905, in the regular course of setting, the parties appeared through their counsel, who announced to be ready for trial. Thereupon the parties read their pleadings in proper order, presented their evidence which was duly heard, except the testimony of only one witness which was unheard. On the 11th of November 1905, the case was called again in open court to proceed with the trial of the same, and both parties appeared through their counsel, who announced to be ready for said trial. Thereupon the evidence which had not been heard was introduced and heard, and the parties argued the case, filing their briefs later on.

The court after hearing the pleadings, the evidence and the arguments, and after a proper consideration of the case, decides that it should render judgment, and it does render judgment, holding as follows: that the court should condemn and does condemn, the defendants, who are heirs of Mrs. Beatriz Alós, to wit: Beatriz de los Angeles, the widow of Mr. Alós, Maria Luis, and Manuel Quisano y

Alós, to deliver to the plaintiffs Monserrate and Dominga García Maytin, within three days, the properties inherited by the said Mrs. Beatriz Alós from her daughter Mrs. Beatriz García y Alós, which
 67 properties had in turn been acquired by the latter as inheritance from her father Mr. Manuel García Maytin, and which are subject to be reserved in favor of the said plaintiffs Monserrate and Dominga García Maytin, who are sisters of the said Mr. Manuel García Maytin, and who have proven in the opinion of the court, to be the only relatives within the third degree, living at the present time, and belonging to the line from which such property originated.

And the properties directed to be delivered to their legitimate owners, are the following:

(a) A coownership appraised in the value of \$7822.22 in Mexican currency, in a total value of \$22915, Mexican currency, in the estate Santa Rosa, situated in the ward of Juan Sanchez, containing eight hundred cuerdas of land, equivalent to 314 hectares and 40 areas, and a two story dwelling house, three milling houses with straw roofs and milling implements, the sugar mills known as "San José" having been included within the bounds of the estate Santa Rosa, inasmuch as they are parts thereof, the said plantation or estate being bounded on the north by an estate known as "Pueblo Viejo" belonging to the Succession of — on the South, by property belonging to the Succession of Anastasio Maysonet; on the east, by lands of the Succession of Antonio Cabranes; and on the west, by property of Nicasio Quiñones and by the river; and

(b) The house marked with the number 75, of San Sebastian Street, in this City, bounded on the right, as one enters the premises, by property of Mrs. Antonia Loreda; on the left, by property belonging to the Police Force; and at the rear by the Northern precinct;
 the said house has been appraised in five thousand pesos.

68 And the house marked with the number 75, of San Sebastian Street, which is directed to be restored, had been alienated by the said Mrs. Beatriz Alós, the value of the same is directed to be paid in lieu thereof, which value shall be ascertained by an appraisement made by three experts, one to be appointed by the plaintiffs, another to be appointed by the defendants and the other to be appointed by the Court, the opinion of the majority to be accepted in case they fail to reach a unanimous decision, and the Court further decides to deny the other petitions made in the complaint. The costs are imposed upon the defendants, who are heirs of Mrs. Beatriz Alós. Let an execution be issued to satisfy this judgment, which shall be entered in the judgment book of this Court.

Rendered in open court this 30th day of March, 1906.

Entered this 31st day of March, 1906.

EMILIO DEL TORO, *Judge*.

Attest:

JOSÉ E. FIGUERAS,

Secretary.

69

Notice of Appeal.

In the District Court for the Judicial District of San Juan, Porto Rico.

MONSERRATE GARCIA MAYTIN et al., Plaintiffs,

vs.

RICARDO VELA et al., Defendants.

Action for the Nullity of a Will and of Certain Contracts and for the Recovery of Properties.

The Secretary of the Court:

The plaintiffs through the undersigned Attorney request you to be pleased to take notice of the appeal hereby taken by them from the judgment rendered by this Court in the above entitled case, inasmuch as the said judgment does not grant the petitions made by the plaintiffs in the prayer of the complaint under numbers 1, 3, 4, 5, 6, 7 and 8, granting only the petitions prayed for under number 2 thereof.

San Juan, Porto Rico, April 30th, 1906.

(Signed)

N. PEREZ MORIS,
Attorney for Plaintiffs.

Service.

We hereby accept service of the above notice together with a copy thereof this 30th day of April, 1906.

WENCESLAO BOSCH.
ACUÑA AND MENDEZ.
F. DE LA TORRE.

Filed in the Secretary's office this 30th of April, 1906.

(Signed)

JOSÉ E. FIGUERAS.

70

In the District Court for the Judicial District of San Juan,
Porto Rico.

MONSERRATE GARCIA MAYTIN et al., Plaintiffs,

vs.

RICARDO VELA et al., Defendants.

Action for the Nullity of a Will and of Certain Contracts and for the Recovery of Properties.

The plaintiffs, through the undersigned, attorney, submit to the court the following statement of facts to be used in the appeal taken by them from the judgment rendered in this case.

Statement of Facts.

I.

We stated in the original complaint presented in this suit that Mrs. Beatriz Alós the widow of Mr. García Maytín, and assigner of the defendants, died in Bayamon on the 18th day of September, 1904, that she was acknowledged by an order entered on the 1st of July, 1892, by the Court of First Instance of the Cathedral District, in this City, as the sole and universal heir abintestate of her daughter, Mrs. Beatriz García, who died in Bayamon on the 28th of September, 1891, and that the said acknowledgment had been made without prejudice to third parties and expressly reserving in favor of the surviving spouse of the said Mrs. Beatriz García, the part in usufruct or legal portion belonging to him, in the form and for the amount provided for in Section 836 of the Civil Code. These facts were

accepted by the defendants in their respective answers and the said facts appear also from the intestate proceedings instituted immediately after the institution of the intestate proceedings of Mr. Manuel García Maytín, who was the father of Mrs. Beatriz García and the husband of Mrs. Beatriz Alós, the said proceedings having been attached to the record as evidence presented by the plaintiffs.

II.

We stated in the third fact of the complaint, in connection with the seventh and thirteenth facts thereof that as a consequence of the order or judicial acknowledgment referred to, the following estates became the property of Mrs. Beatriz Alós the widow of Mr. García Maytín, by virtue of her character of universal and sole heir of her daughter, to wit:

A coownership appraised in the value of \$7,822.22, in Mexican currency, in a total value of \$22,915 in Mexican currency, in the estate "Santa Rosa", situated in the ward of Juan Sanchez, in the jurisdiction of Bayamon, which contains eight hundred cuerdas of land, equivalent to 314 hectares and 40 areas, and a two story dwelling house, three milling houses with straw roofs and milling implements, the sugar mills known as "San José" having been included within the bounds of the estate "Santa Rosa", inasmuch as they are parts thereof, the said plantation or estate being bounded on the North by an estate known as "Pueblo Viejo" belonging to the Succession of Mr. Yordán; on the south, by property belonging to the Succession of Anastasio Maysonet; on the east, by lands of the Succession of Antonio Cabranes; and on the west by property of Nicanor Quiñones and by the River; the house marked with the number 75 of San Sebastian Street, of this City, bounded on the right, as one enters the premises, by property of Mrs. Antonia Laredo; on the left by property belonging to the police force; and at the rear by the northern precinct; and eight carts and three plows.

III.

72 It appears from the certificates of the Registry of property of San Juan, presented as evidence by the plaintiffs, that Mrs. Beatriz Alós the widow of Mr. García Maytín caused the aforesaid coownership in the estate of Santa Rosa to be recorded in her favor, without prejudice to third parties, and as intestate inheritance from her daughter Beatriz García, that is to say, said record or entry was made by virtue of a judgment rendered by Mr. Enrique Lúsarreta, Judge of First Instance of the Cathedral District, on the 1st of July, 1892, whereby Mrs. Beatriz Alós de los Angeles, the mother of Mrs. Beatriz García y Alós, deceased, was acknowledged as the abintestate heir of the latter, without prejudice to third parties, having a better right, the said entry of the said coownership having been made in the Registry of property on the second page of folio 5, Vol. seven of Bayamon, estate marked with number 293, sixth inscription or entry thereof.

It appears also from the proper certificate of the said Registry of Property that Mrs. Beatriz Alós caused the aforesaid house marked with the number 75 San Sebastian Street of this City to be recorded in her favor by virtue of the said judicial acknowledgment, and also without prejudice to third parties, the entry having been made on folio 206, Vol. 24 of this City, estate marked with the number 1015, fourth inscription or entry thereof.

IV.

We stated in the complaint that the properties described in the foregoing fact which had been inherited by the said mother from the said daughter, were the same properties which had been awarded to the latter in the partition proceedings of the inheritance of her father, Mr. Manuel García Maytín, which proceedings were instituted on the 6th of December, 1886, according to the rules laid down for the necessary testamentary proceedings, and were approved on the 4th of February, 1887, by an order of the Court of First Instance of the Cathedral District, and placed on record on the 3rd of June, 1887.

The said partition proceedings, which are herein copied, have been included in the abintestate proceedings, or in the proceedings for the designation of heirs of Mr. García Maytín, above referred to, and have been presented as evidence by the plaintiffs.

And we stated also in the said third fact of the complaint that Mr. Manuel García Maytín died in Bayamon on the 6th of March, 1886, and that by an order of the said court, entered on the 6th of June of the same year 1886, Beatriz García was acknowledged as the sole and universal abintestate heir of her father Mr. Manuel García Maytín.

The facts stated in the foregoing paragraph appear from the abintestate proceedings above mentioned, and the defendants have accepted the same in their respective answers.

The facts stated in the first paragraph of this fact were not accepted by the defendants.

V.

The partition proceedings referred to, according to the text thereof, appear to be written as follows:

At the City of San Juan Bautista de Puerto Rico, this sixth day of December in the year one thousand eight hundred and eighty-six, I, Mr. Francisco N. Peña, appointed auditor to make the partition in the testamentary proceedings of Mr. Manuel Garcia Maytin, together with his surviving spouse Mrs. Beatriz Alós de Garcia and with his heir the minor, Mrs. Beatriz Garcia y Alós, assisted by her curator *ad litem* Mr. Eduardo Rodeyro, proceed to make the liquidation, account and partition of the estate left at the death of the said Mr. Garcia Maytin and state the following facts for a proper understanding thereof, to wit: First, Mr. Manuel Garcia Maytin died in Bayamon at 8 a. m., on the seventh day of March of this year, having executed a nuncupative will on the 24th of November, 1873, before Mr. Mauricio Guerra, a Notary Public, whereby he instituted his brothers and his natural daughter as his heirs, which daughter he procreated with Mrs. Beatriz Alós and whose name is Mrs. Beatriz Garcia. Second, subsequent to the execution of the said will Mr. Manuel Garcia Maytin married the said Mrs. Alós, that is to say on the 6th of November 1876, thereby legitimizing the aforesaid daughter and therefore the said will was rendered null and void. Third, by virtue of the foregoing facts, and as the said will was rendered void and without any effect whatever with regard to the substitution of heirs the surviving spouse of Mr. Garcia Maytin, as representative of his daughter, applied to the Court of First Instance of the Cathedral District of this City, requesting the court to consider that Mr. Garcia Maytin had died intestate and as a consequence thereof, to acknowledge his legitimate daughter Mrs. Beatriz Garcia y Alós as his heir abintestate, which petition was granted by the Court on the 6th of June of the present year. In accordance with the foregoing facts, and the widow of Mr. Garcia Maytin having stated that in the estate left by the latter there were no properties belonging to the conjugal partnership, I proceed to make the partition and award in the following form:

75 First. Eight thousand four hundred pesos, part value of the house marked with the number 29 of San José Street, of this City, which is bounded on the right, as one enters the premises, by property belonging to Mrs. Elvira Capetillo; on the left, by property of Mr. Fernando Sarraga; and at the rear by property of Mr. José E. Marxuach. The said amount is herein entered as property belonging to the inheritance

\$8,400

Second. The sugar plantation known as Santa Rosa, situated in the ward of Juan Sanchez, in the jurisdiction of Bayamon, which contains eight hundred cuerdas of land, equivalent to 314 hectares and 40 areas; a two story dwelling house, three milling

houses with straw roofs and milling implements, the sugar mills known as San José, having been included within the bounds of the estate Santa Rosa, inasmuch as they are parts thereof, the said plantation being bounded on the north, by the estate known as "Pueblo Viejo" belonging to the Succession; on the south by property belonging to the Succession of Mr. Atanacio Maysonet; on the east by property belonging to the Succession of Mr. Antonio Cabranes; and on the west by property belonging to Mr. Nicanor Quiñones and by the River. The said estate is appraised at.....		22,915
Third. A house marked with the number 75 of San Sebastian Street of this City, bounded on the right, as one enters the premises, by property belonging to Mrs. Antonia Loreda; on the left by property		
	Carried forward	\$31,315
76	Brought forward	\$31,315
	belonging to the police force; and in the rear by —; said house is appraised at five thousand pesos	5,000.
Fourth.	Black cattle to the value of three thousand four hundred and fifty-seven pesos and fifty centavos	3,457.50
Fifth.	Seven horses appraised at two hundred and ten pesos	210.00
Sixth.	Eight carts appraised at one hundred and sixty pesos	160.00
Seventh.	Three plows appraised at thirty-six pesos. . .	36.00
Eighth.	The furniture found in the house of the deceased appraised at forty pesos.....	40.00
Ninth.	One hundred and eighteen cuerdas of land, equivalent to forty-six hectares, thirty-seven areas, and forty centiarecas, situated in "El Palmar," in a place known as "El Pastillo" in the ward of — in the jurisdiction of Bayamon, bounded on the north, by — on the South by — on the east by — on the west by — appraised at the value of two thousand five hundred pesos.....	2,500.00
Total amount of the estate.....		\$42,718.50

General Liabilities Against the Estate.

A census constituted in favor of the R. R. M. M. Carmelitas for one thousand one hundred and fifty pesos		1,150.00
Carried forward		\$1,150.00

77	Brought forward	\$1,150.00
	Interest due on the foregoing census amounting to fifty-seven pesos and fifty centavos...	57.50
	Another capital in favor of the Chapter, amounting to seven hundred and fifty pesos.....	750.00
	Interest thereon amounting to three hundred and thirty-seven pesos and fifty centavos.....	337.50
	Another census in favor of the R. R. M. M. Carmelitas for eight hundred and eighty-eight pesos....	888.00
	A census in favor of vacant chaplaincies for the amount of one thousand two hundred pesos.....	1,200.00
	A census in favor of vacant chaplaincies for the sum of six hundred pesos.....	600.00
	Another census in favor of the said vacant chaplaincies for the sum of three hundred pesos.....	300.00
	Another in favor of the said vacant chaplaincies for the sum of three hundred and fifty pesos.....	350.00
	Another census in favor of Nuestra Sra. del Carmen for the sum of one hundred and twenty-five pesos..	125.00
	Interest on the last mentioned census amounting to fifty pesos	50.00
	Another census in favor of the vestry of Bayamon for the sum of one thousand pesos.....	1,000.00
	Another census in favor of the said vestry for four hundred pesos	400.00
	A credit constituted in favor of Mr. Hilario Cuevillas, attorney-at-law for the sum of two thousand and twenty-six pesos and sixty-six centavos.....	2,026.66
	Another credit in favor of Mr. Antonio Arana for three thousand pesos.....	3,000.00
	Another credit in favor of the Bar Association for two thousand five hundred & seventy-six pesos.....	2,576.00
	Carried Forward	\$14,810.66
78	Brought forward	\$14,810.66
	Another in favor of Mrs. Amalia Rufina Valencia for one thousand pesos.....	1,000.00
	Another credit in favor of Mr. Andres Crosas for twelve thousand six hundred and eighty-nine pesos and sixty-two centavos.....	12,689.62
	Expenses caused by last illness and by the funeral and the estimated expenses of the testamentary proceedings; one thousand and two hundred pesos.....	1,200.00
	Total amount of liabilities.....	\$29,700.28
	<i>Summary.</i>	
	The total estate amounts to forty-two thousand and seven hundred and eighteen pesos and fifty centavos	\$42,718.50
	Amount of liabilities: twenty-nine thousand, seven hundred pesos and twenty-eight centavos.....	29,700.28
	Balance	\$13,018.22

After making the foregoing calculation, I proceed to make the partition in the following form: Schedule or inventory made in favor of the widow Mrs. Beatriz Alós for the payment of the liabilities.

Twenty-nine thousand seven hundred pesos and twenty-eight centavos are awarded to the said lady for the purpose stated.....		\$29,700.28
For the payment of the said liabilities the following is awarded to her: the mortgage credit constituted upon the house marked with the number 29 of San Jose Street, amounting to eight thousand four hundred pesos.....		\$8,400.00
	Carried forward	\$8,400.00
79	Brought forward	\$8,400.00
	The black cattle appraised in the sum of three thousand four hundred and fifty-seven pesos and fifty centavos.....	3,457.50
	Seven horses appraised in two hundred and ten pesos.....	210.00
	Furniture for the value of forty pesos..	40.00
	One hundred and eighteen cuerdas of land situated in the place known as "El Pastillo" and which have been described in the inventory, appraised in the sum of two thousand and five hundred pesos	2,500.00
	Fifteen thousand and ninety-two pesos and seventy-eight centavos as part of the value of the estate known as "Santa Rosa" and implements belonging thereto	15,092.78
	Total amount	\$29,700.28

\$29,700.28

The foregoing portion is fully paid.

Schedule Made in Favor of the Heir, Mrs. Beatriz Garcia y Alós.

The remainder of the estate after deducting the foregoing liabilities is to be awarded to the said heir, said remainder amounting to thirteen thousand and eighteen pesos and twenty-two centavos.....		\$13,018.22
For the payment of her portion the following is awarded to the said heir: the house marked with the number 75 of San Sebastian Street		

Carried forward

\$13,018.22

80	Brought forward	\$13,018.22	
	Of this City appraised in the value of five thousand pesos.....	5,000.00	
	The balance of the value of the estate Santa Rosa amounting to seven thou- sand eight hundred and twenty-two pesos and twenty-two centavos.....	7,822.22	
	Eight carts for the value of one hun- dred and sixty pesos.....	160.00	
	Three plows for the value of thirty-six pesos	36.60	
	Total	\$13,018.22	\$13,018.22

The foregoing portion is fully paid.

Verification.

Amount of the estate.....	\$42,718.50	
Amount of Liabilities.....	\$29,700.28	
Amount of the portion awarded to the heir	13,018.22	
Total	\$42,718.50	\$42,718.50

It is hereby acknowledged that if there should appear any other property belonging to the said estate or inheritance, the same is to be awarded to the heir Mrs. Beatriz García y Alós. The partition was thereupon closed and the same has been made to the best of my knowledge and ability, and signed by the widow Mrs. Alós, by the heir and her curator, and by me, at San Juan, date ut supra.

VI.

It is stated in the certificate of the Registry of Property presented by the plaintiffs, with regard to the house marked with the number 29 San José Street of this City, that the three parts or interests in the said house which belonged to Mr. Manuel García Maytín and whose value is \$8,400.00, have been recorded in favor of Mrs. Beatriz Alós de los Angeles by virtue of the award and adjudication thereof, made in her favor in the testamentary proceedings of her husband Mr. Manuel García Maytín, subject to the payment of the liabilities regarding the same.

It appears from the said certificate, with regard to the estate Santa Rosa, that the part which was awarded to Mrs. Beatriz Alós for the payment of the liabilities, in the total value of the said estate, which is \$22,915.00, and which part amounts to \$15,092.78, has been recorded in favor of the said Mrs. Beatriz Alós, and that the part belonging to Mrs. Beatriz García, as intestate inheritance, and which amounts to \$7,822.22, has been recorded in favor of the latter; these entries being the first inscription of the said estate. It appears from the sixth inscription of the same estate that the coownership for the

value of \$7822.22 which in the said estate belonged to the daughter Mrs. Beatriz García, has been recorded in favor of Mrs. Beatriz Alós, as intestate inheritance, and without prejudice to third parties.

It appears from the third inscription of the estate of one hundred and seventeen cuerdas of land, situated in the place known as "El Pastillo" that the same was recorded in favor of Mrs. Beatriz Alós by virtue of the award made thereof in her favor in the testamentary proceedings of her husband Mr. García Maytín, subject to the payment of the debts.

The first inscription of the house marked with the number 75 of San Sebastian Street of this City, shows that the same was recorded in favor of Mrs. Beatriz García as intestate inheritance from her father Mr. Manuel García Maytín.

The fourth inscription thereof shows that the said house is recorded in favor of Mrs. Beatriz Alós as intestate inheritance from her daughter, Mrs. Beatriz García de Ibarra, without prejudice to third parties having a better right.

VII.

We stated in the fifth fact of the complaint that the properties inherited by Mrs. Beatriz Alós from her daughter, who in turn inherited the same from her father, were subject to be reserved or set apart, since the death of the said daughter, in favor of the relatives within the third degree belonging to the line from which such properties originated and that the plaintiffs herein are the only relatives alive, who have the conditions required by law.

The opinion of the Court, as shown by the judgment rendered in this case, is to the effect that Mrs. Monserrate and Mrs. Dominga García Maytín, who are sisters of Mr. Manuel García Maytín, have proven to be the sole relatives within the third degree, living at the present time, and belonging to the line from which such properties originated.

The following particulars appear from the evidence presented by the plaintiffs, with regard to this matter of relationship: the witnesses, Mr. José Montesinos, Mr. Ignacio García Quiara and Mr. Juan Emilio Turull testified that the heirs García Maytín, were six in number, three of whom to wit, Mr. José, Miss Carmen and Miss Luisa have died; that only Mr. Angel, Mrs. Monserrate and Mrs. Dominga, plaintiffs herein, are alive; that the grandfather and grandmother of Mrs. Beatriz García's father, that is to say, the parents of the heirs García Maytín, have died; that the great-grandfather and the great grandmother of Mrs. Beatriz García's father have also died and that Mrs. Beatriz García had no brother or sister,

she being the only daughter of Mr. Manuel García Maytín; that there are public rumors to the effect that Mr. Angel García Maytín is living and residing in Mexico, where he is engaged in the practice of law and according to Mr. Turull's statement, a son of Mr. Angel García came to San Juan, nearly a year ago, on his way to Mexico, where he intended to meet his father.

On pages of the record there are certificates showing the death of Mr. José García Maytín, which occurred at Paris, and that of Miss Carmen and Miss Luisa García Maytín, which happened at Madrid,

There are certain certificates presented by the plaintiffs showing the birth of the said Mr. José, Miss Carmen and Miss Luisa García Maytín, and that of the plaintiffs herein.

It appears from the will executed on the 24th of November, 1873, by Mr. Manuel García Maytín, before Mr. Mauricio Guerra, a notary public of this city, that prior to the legitimation of his daughter Beatriz by his subsequent marriage, the said Mr. Manuel García Maytín, instituted by the said will his sisters and brothers Mr. José, Mr. Angel, Mrs. Carmen, Mrs. Dominga, Mrs. Luisa and Mrs. Monserrate García Maytín, as heirs of one half of his estate. Said will has been copied in the abintestate proceedings of Mr. Manuel García Maytín.

The power granted to the undersigned attorney to bring this suit, by Mrs. Monserrate and Mrs. Dominga García Maytín in their own right and by Mrs. Ana Marien y Davila as representative of her absent husband Mr. Angel García Maytín, is shown by the public deed of judicial power, executed by the plaintiffs herein and which is attached to the record on pages 66 to 69 thereof.

Mrs. Ana Marien granted that power by virtue of the authority, judicially and duly conferred upon her to appear in court, and so it appears from the text thereof, an attested copy of which has been included in the aforesaid deed of judicial power which is found on pages 196 and 197 of the record.

It does not appear from the said proceedings that the absence of Mr. Angel García Maytín has been legally acknowledged by the judicial authority and as above stated the witnesses, Messrs. Montesino, Quiara and Turull testified that there was a public rumor to the effect that Mr. Angel García Maytín lives and resides in Mexico, engaged in the practice of law.

VIII.

We stated in the sixth fact of the complaint that the facts previously stated in the same complaint together with the description of the properties inherited by the said mother from the said daughter, who in turn inherited the same from her father, according to the award made in favor of the said daughter by inheritance, as well as the action of the said mother in disposing of the said properties by her last will in favor of persons other than those who demand the same, would be sufficient to prove the right of the latter and to justify the action brought by them, which could be termed as far as the facts stated are concerned, an action for the nullity of the said will and for the recovery of properties.

The statement to the effect that Mrs. Beatriz Alós disposed by a will of the properties referred to in favor of persons other than the plaintiffs herein, is made also in the first fact of our complaint, and it is stated in the first paragraph of the answers of the defendants Mrs. Beatriz de los Angeles and Mr. José Quixano, who answers in his own right and as representative of his minor children Miss

Maria, Mr. Luis and Mr. Manuel, that Mrs. Beatriz Alós, the surviving spouse of Mr. García Maytín executed her will on the 9th of September, 1904, before Mr. Tomas Valdejuli, a

notary public, by virtue of which she made the following bequests, to wit: \$1000. dollars to Mr. José Quixama Leizaur; \$300 dollars to Mrs. Guadalupe García y Quiara; she bequeathed half of her inheritance to her nephews Mr. Luis and Mr. Manuel Quixama y Alós and to her niece Miss Maria Quixama y Alós (after deducting from the same the amount of the aforesaid bequests and the payment of the burial and funeral expenses of the testatrix) said half to be distributed among the said legatees at the rate of two parts thereof for Miss Maria Quixama y Alós, and one part thereof for each of the said Luis and Manuel Quixama y Alós. The testatrix instituted her legitimate mother, Mrs. Beatriz de los Angeles as her heir of the remaining half of her inheritance, and she acquired thereby only that part which could not be disputed to her, that is to say, that part which the law reserves for her as a legal portion.

The said will has been mentioned in the second inscription made in the Registry of Property with regard to the estate "Santa Rosa" and the said estate has been recorded in favor of Mrs. Beatriz de los Angeles, surviving spouse of Mr. Alós; as testate inheritance and by virtue of an award made in her favor for the payment of debts amounting to \$3206.40.

IX.

We stated in the sixth fact of the complaint that the claims of the plaintiffs had to be extended to some other acts and to some other properties than those stated in the preceding facts of the said complaint.

And we stated in the seventh and eighth facts of the complaint in connection with the ninth and tenth facts thereof, that, in effect, the inheritance left by Mr. Manuel García Maytin, to his daughter Mrs.

Beatriz García did not consist only of the amount and of the
 86 properties stated in the proper partition proceedings; that the assigner's properties were appraised for half or less than one half of their value; that some liabilities which did not exist had been considered as existing, the false amount thereof having been raised so high that the same took nearly three-fourths of the inheritance; that not all the properties, rights and actions of Mr. García Maytin were included in the inventory; that notwithstanding the statement made by the widow Mrs. Beatriz Alós to the effect that among the properties left there was no property belonging to the conjugal partnership, her intervention as interested party to the partition contract remained, and that the schedule of liabilities as well as of the properties subject to the payment thereof were awarded to her, just as if she were a real party in interest, or a co-heir, she giving her consent to said award; that Mrs. Beatriz Alós has not shown in any way what ever, judicially or extrajudicially, either to the minor or, after her death, to the plaintiffs herein, the investment or use made by her of the properties awarded to her for the payment of debts, and that, on the contrary, the greater part of the properties awarded to her for the said purpose, or those of the highest value, still appeared recorded in her favor in the Registry of Property, and that she disposed of the same freely by her last will; and that the debts which Mrs. Beatriz Alós could have paid in any case, might

have been paid out of the money belonging to the inheritance, not included in the inventory, and at all events, they might have been paid out of the proceeds of the properties belonging to Mr. García Maytín; that the only existing liabilities against the inheritance were constituted by the interest of certain census, and by the expenses caused by the funeral and by the testamentary proceedings and that the plaintiffs could not accept the partition made of the properties of

87 Mr. García Maytín, the nullity of which is proper to be decreed inasmuch as the same now appears to have been made to their prejudice and in open violation of the property right secured by law upon the estates of Mr. García Maytín, on behalf of the plaintiffs.

X.

In the liquidation and partition which we have inserted in the statement, and which was made nine months after the death of Mr. Manuel García Maytín, no item whatever is found regarding the proceeds or rents of the properties during the said lapse of time.

According to the testimony of Mr. Ignacio Rosales at the trial of the case, prior to the death of Mrs. Beatriz Alós the latter leased to the former the estate Santa Rosa for the sum of one hundred and ten dollars.

Mr. Ramón Valdés testified to the effect that the monthly rent of the estate known as "El Pastillo" is \$18.00. The monthly rent of the shares belonging to Mr. García Maytín in the house marked with the number 29 of San José Street, according to the testimony of the administrator thereof, Mr. José Montesino, is nearly seventy dollars.

And the monthly rent of the house marked with the number 75 of San Sebastián Street, which belonged as well as those stated above, to the Maytín's inheritance, is \$50.00, according to the testimony of the administrator thereof, Mr. Augustin Gonzalez.

In the partition proceedings referred to no item is found with regard to any cash amount, and the witness Mr. Andres Crosas, testified that Mr. García Maytín was not in debt with him, but the latter was Mr. Crosas' creditor for \$1858.00, which were collected or received by Mr. García Maytín's widow, according to Mr. Crosas' statement, nearly one month after the death of her husband.

88 In the said partitions no item is found either with regard to jewels. The witnesses Messrs. Quirara and Turull testified at the trial that Mr. García Maytín had jewels and that he used to wear them.

It appears from the sixth inscription of the house marked with the number 29 of San José Street, that the three shares or parts thereof, one for six thousand six hundred and ninety-five pesos and ten centavos, another for six thousand one hundred and ninety-five pesos and twenty centavos, and the other for three thousand two hundred and eighteen pesos, belonging to Mr. Manuel García Maytín, were acquired by Mrs. Beatriz Alós for the sum of eight thousand four hundred pesos by virtue of the award thereof made in her favor in the testamentary proceedings of her husband, subject to the payment of the debts.

The following debts against the testamentary of Mr. Garcia Maytin appear to have been paid from the documentary evidence presented by the defendants and from the certificate of the Registry presented by the plaintiffs, to wit: \$2026.56 to Mr. Hilario Cuevillas; \$3000. to Mr. Antonio de Arana; \$2576. to the Bar Association; and \$445. as interest on census.

The witness Mr. Andres Crosas testified at the trial with regard to the credit of \$12689.62, which, according to the partition proceedings of the inheritance of Mr. Garcia Maytin, appeared to have been constituted in favor of the former and against the latter. And Mr. Crosas stated that Mr. Garcia Maytin did not owe him any amount whatever, but on the contrary that he, Mr. Crosas, owed Mr. Garcia Maytin, when the latter died, the sum of \$1858, as a result of certain sales of sugar which the said witness used to make for the account of Mr. Garcia Maytin; that the said \$1858.00 were delivered by him to the widow Mrs. Beatriz Alós, nearly one month after the death of Mr. Garcia Maytin. And Mr. Crosas said further that the debt of twelve thousand and odd pesos was contracted with him by the widow to pay certain obligations, among them, \$8000, which she delivered to her son-in-law Mr. Ibarra in payment of the part in usufruct which the latter alleged to have in the inheritance of his wife Mrs. Beatriz Garcia, daughter of the said lady; Mr. Crosas stated also that on account of his many occupations he did not have time nor occasion to observe that when the public deed of June 2nd, 1902 was executed, which deed has been presented as evidence by the defendants, and recorded in the Registry of Property, there happened to be an important error or mistake in the drawing of the said deed, inasmuch as the same was given the character of an acquittance and cancellation of the debt for which he appeared as creditor in the testamentary proceedings of Mr. Garcia Maytin, when he was not such a creditor, the said deed ought to have been drawn in the form of an acquittance for the sums which the widow Mrs. Alós owed him.

When the plaintiffs summoned the defendants as witnesses, they required the latter to produce the documents showing the payment or extinction of the debts which appear in favor of Mrs. Amalia Rufina Valencia and against the said testamentary, and the documents showing the payments made by Mrs. Beatriz Alós on account of the expenses incurred by the last illness, burial and testamentary proceedings of the deceased.

The plaintiffs requested also by the same paper the production of the tax receipts with regard to the estate "Santa Rosa," showing the official appraisal of the said estate for the current fiscal year.

It appears from the sixth inscription of the estate "El Pastillo" that Mrs. Beatriz Alós, who acquired the said estate by an award thereof made in her favor in the testamentary proceedings of her husband, sold the same to Mr. Ramón Valdés by virtue of a public deed executed on the 5th of May, 1898, and for the price of one thousand pesos, which the said lady acknowledged to have received prior to the execution of said instrument.

The aforesaid deed was recorded in the Registry on the 3rd of December 1904.

According to the certificate of the Registry presented by the plaintiffs, the latter inscription appears to have been made after the entry of the notice of the suit to recover the property, said notice having been given by the plaintiffs to the Registrar, and filed in the Registry on the 5th of November, 1904.

XII.

The house marked with number 75, of San Sebastian Street, which, as above stated, was recorded in favor of Mrs. Beatriz Alós, as intestate inheritance from her daughter, and without prejudice to third parties having a better right, (4th inscription of the same estate) was sold by the said lady to Mr. José Caldas y Caldas, and sold afterwards by the succession of the latter to Mr. José María Carazo, who appears from the Registry to be the present owner thereof.

XIII.

The estate "Santa Rosa" remained recorded in favor of Mrs. Beatriz Alós, part thereof was recorded as an award made in her favor for the payment of the debts of the testamentary, and the other part as acquired by her by intestate inheritance from her daughter, as we have stated above.

As we have also stated, the estate referred to, after the death of the said Mrs. Beatriz Alós, and after the entry of the plaintiffs' claim in the Registry, has been recorded in favor of Mrs. Beatriz de los Angeles, Mrs. Alós' mother, who was instituted as testamentary heir of one half of the inheritance belonging to the latter.

XIV.

Mr. Ignacio Rosales testified at the trial that he purchased from Mrs. Beatriz Alós all the sugar cane of the estate "Santa Rosa" and the black cattle found thereon for the sum of \$6193.00, and that she leased to him the said estate for a term of six years to be extended for two years longer, counting said term from the 1st of September, 1904, at the rate of monthly rent of one hundred and ten dollars.

XV.

Mrs. Beatriz Alós bought from Mr. Lorenzo Ibarra, for the sum of eight thousand pesos, in Mexican currency, the part in usufruct reserved to the latter, by a judicial order already referred to, the inheritance of Mrs. Beatriz García, daughter and wife respectively, of the contracting parties and so it appears from the certificate of the Registry presented by the plaintiffs and from the testimony of the witness Mr. Andres Cresas, who, according to his statement, delivered the money therefor.

XVI.

The original complaint in this suit was instituted against Mr. Ricardo Vela, as testamentary executor, appointed in the first place by Mrs. Beatriz Alós; against the heirs and legatees instituted by the said lady, who are Mrs. Beatriz de los

Angeles, as heir and Mr. José Quixano and his children, Miss Maria, Mr. Luis and Mr. Manuel, as legatees; against Mr. Ramon Valdes, who acquired the estate known as "El Pastillo", against Mr. Jose Caldas y Caldas, who acquired and sold in turn the house marked with number 75 of San Sebastian Street; and against any other person who may have acquired from Mrs. Beatriz Alós any property belonging to the inheritance of Mr. Manuel Garcia Maytin, or who may have an interest therein.

The proper inserts from the complaint and the prayer thereof were published by order of the Court in the newspaper "El Boletín Mercantil de Puerto Rico."

The complaint was caused to be directed against Mr. José Carazo, who purchased from Mr. Caldas the house marked with a number 75 of San Sebastian Street, and against Mr. Ignacio Rosales, lessee of the estate "Santa Rosa" for a term of six years, and both were summoned to answer the same, but they summoned for eviction, the Succession of Mr. José Caldas and the heir Mrs. Beatriz de los Angeles, and the latter answered in the name of the former.

XVII.

The default of the defendant Mr. Ricardo Vela was duly entered.

XVIII.

The prayer of the complaint is drawn in the following language:

I pray the court to be pleased to order, after the filing of this complaint, that Mr. Ricardo Vela, testamentary executor appointed in the first place by Mrs. Beatriz Alós de los Angeles, and Mr. José Quixano as representative of his minor children instituted as heirs by the said lady, be personally summoned. To order, further, that the other heirs instituted as such by the said lady in her will, be summoned by a notice published in the newspapers, and that the Succession of Mr. Jose Caldas y Caldas, and the person who acquired the share or coownership which was said to belong to Mrs. Beatriz Alós, in the house marked with the number 29 of San José Street, of this City, as well as all other persons who have acquired any property belonging to the inheritance of Mr. Manuel Garcia Maytin, or who have any interest therein be also summoned by a notice published in the newspapers; to order, further, that Mr. Ramón Valdés be personally summoned; and that the Court, at the proper time, be pleased to render judgment holding:

1st. That the testament or will executed by Mrs. Beatriz Alós de los Angeles is null and void with regard to the disposal made thereby of the estate whose ownership fully belongs by operation of law to the legitimate brothers and sisters of Mr. Manuel Garcia Maytin, who survived the latter.

2nd. That the properties inherited by Mrs. Beatriz Alós, from her daughter Mrs. Beatriz Garcia y Alos, who, in her turn inherited the same from her father, Mr. Manuel Garcia Maytin, as they appear in the partition proceedings of the estate left at the death of the said Mr. Manuel Garcia Maytin, belong to Mrs. Monserrate Gar-

cia Maytin, Mrs. Dominga Garcia Maytin, and Mr. Angel Garcia Maytin; the said properties being a co-ownership appraised in the sum of seven thousand eight hundred and twenty-two pesos, and twenty-two centavos, is the estate Santa Rosa described above; the house marked with a number 75, situated in San Sebastian Street of this City; eight carts and three plows.

94 3rd. That the partition proceedings of the inheritance of Mr. Manuel Garcia Maytin are null and void, especially with regard to the appraisement of the properties, the omissions of properties in the inventory made thereof, and with regard to the schedule of liabilities stated in said partition proceedings, excepting the interest of the census acknowledged therein, and which have not been redeemed, and the expenses caused by the funeral and by the testamentary proceedings.

4th. That, consequently, the estate Santa Rosa as well as all the other properties stated and described in the thirteenth fact of this complaint have constituted the inheritance of Mrs. Beatriz Garcia y Alós, and that the full ownership thereof belongs now to Messrs. Garcia Maytin brothers.

5th. That the alienations made by Mrs. Beatriz Alós, of the estate "El Pastillo"; of the coownership marked with the number 29 of San Jose Street of this City; of the house marked with the number 75 of San Sebastian Street, also of this City, and generally, all the alienations made by the said lady, of the properties which constituted the inheritance of Mr. Manuel Garcia Maytin, are null and void, or have been extinguished since the death of the said lady; and that any mortgages constituted upon the said properties are also null and void or have been extinguished.

6th. That the ownership of the said alienated or mortgaged estates belongs fully and freely to the plaintiffs herein, that is to say, to Messrs. Garcia Maytin Brothers.

7th. That Mrs. Beatriz Alós' heirs are bound to return and deliver to the plaintiffs herein all personal property and live 95 stock belonging to the inheritance of Mr. Manuel Garcia Maytin and others, or the value thereof, under the same conditions established for a person having a part in usufruct.

8th. That the proceeds or profits of all the properties of Mr. Garcia Maytin which were pending or about to be received when Mrs. Beatriz Alós died, and all accretions thereof, belong to the plaintiffs herein.

San Juan, Porto Rico, November 12th, 1904.

The above complaint has been hereby again amended by leave of Court and by the agreement of the parties, on this 28th day of April, 1905.

XIX.

It appears from the record that the certificate of the Registry presented by the plaintiffs was admitted as secondary evidence for the reason that the defendants failed to produce the documents and vouchers which were within their power and the production of which was requested by the plaintiffs.

XX.

The judgment rendered in this case by the District Court is as follows:

Judgment.

No. 212.

MONSERRATE and DOMINGA GARCIA MAYTIN et al.

vs.

RICARDO VELA et al.

Action for the Nullity of a Will and of Certain Contracts and for the Recovery of Properties.

This case coming on to be heard on the 3rd of November, 1905, in the regular course of setting, the parties appeared through their counsel, who announced to be ready for trial. Thereupon the parties read their pleadings in proper order, presented their evidence which was duly heard except the testimony of only one witness which was not heard. On the 11th of November 1905, the case was called again in open court to proceed with the trial of the same, and both parties appeared through their counsel, who announced to be ready for said trial. Thereupon the evidence which had not been heard was introduced and heard, and the parties argued the case, filing their briefs later on.

The court, after hearing the pleadings, the evidence and the arguments, and after a proper consideration of the case, decides that it should render judgment, and it does render judgment, holding as follows: that the court should condemn and does condemn, the defendants, who are heirs of Mrs. Beatriz Alós, to wit: Beatriz de los Angeles, the widow of Mr. Alós, Maria Luis and Manuel Quixano y Alós, to deliver to the plaintiffs Monserrate and Dominga Garcia Maytin, within three days, the properties inherited by the said Mrs. Beatriz Alós from her daughter Mrs. Beatriz Garcia y Alós, which properties had in turn been acquired by the latter as inheritance from her father Mr. Manuel Garcia Maytin, and which are subject to be reserved in favor of the said plaintiffs Monserrate and Dominga Garcia Maytin, who are sisters of the said Mr. Manuel Garcia Maytin, and who have proven in the opinion of the court, to be the only relatives within the third degree, living at the present time, and belonging to the line from which such property originated.

And the properties directed to be delivered to their legitimate owners are the following:

- (a) A coownership appraised in the value of \$7822.22 in Mexican currency, in a total value of \$22915, Mexican currency, in the estate Santa Rosa, situated in the ward of Juan Sanchez, containing eight hundred cuerdas of land, equivalent to 314 hectares and 40 areas, and a two story dwelling house, three milling houses with straw roofs and milling implements, the sugar mills known as "San José" having been included within the bounds of the estate Santa Rosa, inasmuch as they are parts thereof,

the said plantation or estate being bounded on the north by an estate known as "Pueblo Viejo" belonging to the Succession of ———, on the south by property belonging to the Succession of Anastacio Maysonet; on the east, by lands of the Succession of Antonio Cabranes; and on the west, by property of Nicasio Quiñones and by the river; and

(b) The house marked with the number 75, of San Sebastian Street, in this City, bounded on the right, as one enters the premises, by property of Mrs. Antonia Loreda; on the left, by property belonging to the Police Force; and at the rear by the Northern precinct; the said house has been appraised in five thousand pesos. And as the house marked with the number 75, of San Sebastian Street, which is directed to be restored, has been alienated by the said Mrs. Beatriz Alós, the value of the same is directed to be paid in lieu thereof, which value shall be ascertained by an appraisement made by three experts, one to be appointed by the plaintiffs, another to be appointed by the defendants and the other to be appointed by the Court, the opinion of the majority to be accepted in case they fail to reach a unanimous decision, and the court further decides to deny the other petitions made in the complaint. The costs are imposed upon the defendants, who are heirs of Mrs. Beatriz Alós. Let an execution be issued to satisfy this judgment, which shall be entered in the judgment book of this Court.

98 Rendered in open court this 30th day of March, 1906
Entered this 31st day of March, 1906.

EMILIO DEL TORO, *Judge*.

Attest:

JOSÉ E. FIGUERAS,
Secretary.

SAN JUAN, August 6th, 1906.

As it appears that the defendants have been notified according to law, of the foregoing statement of facts, and that a certain day was set to render a decision regarding the approval thereof and the parties having been summoned therefor, the undersigned Judge, deeming the same to be in accordance with the truth, hereby approves the same.

EMILIO DEL TORO, *Judge*.

99

In the Supreme Court of Porto Rico.

No. 65.

MONSERRATE and DOMINGA GARCÍA MAYTIN, Plaintiffs, Appellants
and Appellees.

vs.

BEATRIZ DE LOS ANGELES, Widow of Mr. Alós, Defendant, Appellee
and Appellant.

Appeal Taken from a Judgment Rendered by the District Court of
San Juan in an Action Regarding the Nullity of a Will and
Other Particulars.

*Opinion of the Court, Delivered by the Honorable the Chief Justice,
Mr. Quiñones.*

SAN JUAN, PORTO RICO, June 25th, 1907.

Mr. Manuel García Maytín died on the 6th of March, 1886, in the nearby town of Bayamón, he being a resident and property owner of the said town, and being married to Mrs. Beatriz Alós de los Angeles, with whom he procreated a daughter named Mrs. Beatriz García y Alós, who was legitimized by the subsequent marriage of her parents.

Mr. Manuel García Maytín died after having executed a non-cupative will at the City of San Juan, on the 24th of November 1873, before Mr. Mauricio Guerra Mondragon, a Notary Public of the said City, whereby he instituted his legitimate brothers and sisters Mr. José, Mr. Ángel, Mrs. Luisa, Mrs. Dominga and Mrs. Monserrate García Maytín as heirs of one half of his estate, and his acknowledged natural daughter Mrs. Beatriz García as heir of the other half of his estate; but, by the marriage of Mr. Manuel
100 García Maytín with Mrs. Beatriz Alós de los Angeles the mother of Mrs. Beatriz García, the latter was legitimized by act and right, and she acquired since then the condition or character of heir by force of law of her father, and for this reason, her mother Mrs. Beatriz Alós applied to the Judge of the First Instance of the Cathedral District of this City, requesting the court to hold that the said will was null and void with regard to the substitution of heirs and to acknowledge her daughter Mrs. Beatriz as the sole and universal heir abintestate of her deceased father Mr. Manuel García Maytín, and said petition was granted by the said Judge, by an order entered on the 6th of June of the same year 1866.

By petition of the said widow Mrs. Beatriz Alós de los Angeles, the necessary testamentary proceedings of her deceased husband Mr. Manuel García Maytín were instituted a few months afterwards, and the inventory and appraisal of the properties were simultaneously made, the properties inventoried amounting to the sum of 42718 pesos and 50 centavos, which was distributed in the following manner: 8400 pesos as part of the value of the house numbered 29 on San José Street, of this City; 22915 pesos as the value

of the sugar cane plantation known as "Santa Rosa" situated in the ward of "Juan Sanchez" in the jurisdiction of Bayamón, containing 800 cuerdas of land, equivalent to 314 hectareas, 40 areas, the estates known as "San José" having been included therein inasmuch as they formed part of the same plantation, a two story dwelling house, three mill-houses with straw roofs, and milling implements, etc., etc.; 5000 pesos in the value of a house marked with the number 75 of San Sebastian Street of this City; 3457 pesos and 50 centavos which is the value of the black cattle; 210 pesos the value of seven horses; 160 pesos, the value of eight carts; 36 pesos, the value of three ploughs; 40 pesos, the value of the furniture found in the house of the deceased; 2800 pesos, which is the value of 118 cuerdas of land, equivalent to 46 hectareas, 37 areas and 40 centiarecas, situated in "El Palmar" a place known as "El Pastillo;" the total amount of the inventoried estate being 42,718 pesos and 50 centavos.

The inventory of the liabilities having been also made the same amounted to 29,700 pesos and 28 centavos, according to the details stated in the inventory; and the liquidation and partition of the estate having been made by Mr. Francisco X. Peña, appointed to make the partition, together with the widow Mrs. Beatriz Alós and Mr. Eduardo Rodeyro, who was appointed curator ad litem for the minor and heir Mrs. Beatriz García. It appears from the said liquidation and partition that the inventoried properties amounting, as above stated, to 42,718 pesos and 50 centavos, the total amount of the liabilities, which is 29,700 pesos and 28 centavos, being deducted therefrom, there remained a liquidated balance of 13,018 pesos and 22 centavos which constituted the legal portion belonging to the heir Mrs. Beatriz García y Alós, and for the payment thereof the following properties were awarded to her: the house marked with the number 75, on San Sebastian Street of this City; whose total value is 5000 pesos; 7822 pesos and 22 centavos as part value of the estate "Santa Rosa;" 160 pesos the value of eight carts; 36 pesos the value of three ploughs; total amount 13018 pesos and 22 centavos; the other properties stated in the inventory were awarded to the widow

Mrs. Beatriz Alós for the payment of the liabilities stated in the said inventory. There was no property belonging to the conjugal partnership. The account of the division and partition of the estate having been approved by the said Judge of First Instance of the Cathedral District, by an order entered on the fourth of February 1887, the same was placed on record in the office of Mr. Mauricio Guerra Mondragón, a Notary Public of this City, on the 3rd of June of the same year 1887. Afterwards Mrs. Beatriz García y Alós married Mr. Lorenzo Ruiz Ibarra; and the former having died on the 28th of September, 1891, leaving no succession and without having executed any will, her mother Mrs. Beatriz Alós de los Angeles applied to the Court of the First Instance of the Cathedral District, requesting to be acknowledged as heir of her deceased daughter, and said petition was granted by the said Court by an order entered on the 1st of July, 1892, "without prejudice to third parties and reserving the legal portion belonging to the widower

Mr. Lorenzo Ruiz Ibarra, in the form and for the amount provided for in Sec. 836 of the Civil Code in force at that time."

When the death of Mrs. Beatriz García occurred, no inventory or partition of her properties were made, and the widower Mr. Lorenzo Ruiz Ibarra having ceded to Mrs. Beatriz Alós de los Angeles, all rights and actions belonging to him in the inheritance of his deceased wife, for the sum of eight thousand pesos in Mexican currency, Mrs. Beatriz Alós recorded in her favor, in the Registry of Property of this City the properties left at the death of her daughter Mrs. Beatriz García, which were constituted by the coownership belonging to her in the estate "Santa Rosa" as inheritance of her father Mr. Manuel García Maytín, amounting to the sum of 7822 pesos and 22 centavos, and by the house marked with the number 75 of San Sebastian Street of this City, which she inherited

103 also from her deceased father, Mr. Manuel García Maytín.

From the properties which constituted the estate left at the demise of Mr. Manuel García Maytín, and which came to be the property of his widow Mrs. Beatriz Alós de los Angeles, part thereof by virtue of award made to her for the payment of the debts of her deceased husband, and the other part as inheritance from her daughter Mrs. Beatriz García, the mother of the latter, Mrs. Beatriz Alós de los Angeles sold to Mr. Ramón Valdés the estate known as "El Pastillo" and to Mr. José Celdas the house marked with the number 75 of San Sebastian Street, and she leased also the estate Santa Rosa to Mr. Ignacio Rosales.

Mrs. Beatriz Alós de los Angeles, surviving spouse of Mr. García Maytín, died also at the town of Bayamon on the 18th of September, 1904, after having executed a will, whereby, among other things, she instituted her mother Mrs. Beatriz de los Angeles, the widow of Mr. Alós, residing in Spain, as heir of one third of her estate, and she instituted her nephews the minors Mr. Luis and Mr. Manuel Quixano y Alós, and her niece the minor, Miss María Quixano y Alós, represented by their legitimate father Mr. José Quixano y Lasuer, as heirs of the remaining two-thirds of her estate.

Mrs. Beatriz Alós de los Angeles having died, as above stated, on the 18th of September, 1904, a few months afterwards, to wit, on the 24th of October of the same year, Mr. Nemesio Pérez Moris, Attorney for Mrs. Dominga and Mrs. Monserrate García Maytín, and for Mrs. Ana Marien y Davila, the latter as representative of her absent husband Mr. Angel García Maytín, whose whereabouts are unknown, legitimate brother and sisters of the deceased, Mr. Manuel

García Maytín, filed the complaint instituting the present

104 suit, which he afterwards amended on the 28th of April of

the following year, and in the said complaint he stated the foregoing facts and he opposed also as fraudulent, the partition proceedings of the testamentary of Mr. Manuel García Maytín, for the reason that there were considered as existing certain liabilities which did not exist at all, and for the payment of which the larger part of the properties belonging to the inheritance, greatly diminished in their true value, had been unlawfully awarded to the widow of the said Mr. García Maytín; and the said plaintiffs made use of the

right which they deemed to have under Sec. 799 of the Revised Civil Code, which is equivalent to Sec. 811 of the former Civil Code, and according to which, the properties inherited by Mrs. Beatriz García y Alós from her father Mr. Manuel García Maytín, and which by the demise of the former and by operation of law came to be the property of Mrs. Beatriz Alós de los Angeles, should be deemed to be subject to be reserved in favor of the said plaintiffs for the reason that they are relatives within the third degree of the deceased Mrs. Beatriz García and belonged to the same line from which the said properties originated; the aforesaid attorneys finally prayed the court to be pleased to order, after the filing of the complaint, that Mr. Ricardo Vela, testamentary executor appointed in the first place by Mrs. Beatriz Alós de los Angeles, and Mr. José Quixano, as representative of his minor children instituted as heirs by the said lady, be personally summoned. And to order further that the other heirs instituted as such by the said lady be summoned by a notice published in the newspapers, and that the succession of Mr. José Caldas y Caldas, and the person who acquired the share or coownership which was said to belong to Mrs. Beatriz Alós in the house

105 marked with the number 29 of San José Street of this City, as well as all other persons who have acquired any property belonging to the inheritance of Mr. Manuel García Maytín, or who have any interest therein, be also summoned by a notice published in the newspapers; and to render judgment at the proper time, holding:

1st. That the will executed by Mrs. Beatriz Alós de los Angeles is null and void with regard to the disposal made thereby of the estates whose ownership fully belongs, by operation of law, to the legitimate brothers of Mr. Manuel García Maytín who survived the latter

2nd. That the properties inherited by Mrs. Beatriz Alós from her daughter Mrs. Beatriz García y Alós, who in her turn inherited the same from her father Mr. Manuel García Maytín, as they appear in the partition proceedings of the estate left at the death of the said Mr. Manuel García Maytín, belong to Mrs. Monserrate, Mrs. Dominga and Mr. Angel García Maytín; the said properties being a co-ownership appraised in the sum of seven thousand, eight hundred and twenty-two pesos, and twenty-two centavos, in the estate "Santa Rosa", described above; the house marked with number 75, situated in San Sebastian Street of this City; eight carts and three plows.

3rd. That the partition proceedings of the inheritance of Mr. Manuel García Maytín, are null and void, especially with regard to the appraisalment of the properties, the omissions of properties in the inventory made thereof, and with regard to the schedule of liabilities included in said partition proceedings excepting the interest of the census acknowledged therein and which have not been redeemed, and the expenses caused by the funeral and by the testamentary proceedings.

4th. That, consequently the estate "Santa Rosa" as well as all the other properties stated and described in the thirteenth fact of
106 this complaint, have constituted the inheritance of Mrs. Beatriz García y Alós and that the full ownership thereof belongs now to García Maytín Brothers.

5th. That the alienations made by Mrs. Beatriz Alós of the estate "El Pastillo"; of the coownership in the house number 29, situated in San José Street, of this City, of the house number 75, situated in San Sebastian Street, also of this City, and, generally, all the alienations made by the said lady of the properties which constituted the inheritance of Mr. Manuel Garcia Maytin, are null and void, or have been extinguished since the death of the said lady; and that any mortgages which she might have constituted upon the said properties are also null and void, or have been extinguished.

6th. That the ownership of the said alienated or mortgaged estates belong fully and freely to the plaintiffs herein, that is to say, to Garcia Maytin brothers.

7th. That Mrs. Beatriz Alós' heirs are bound to restore and deliver to the plaintiffs herein all personal properties and live stock belonging to the inheritance of Mr. Manuel Garcia Maytin, and others, or the value thereof, under the same conditions established for a person having a part in usufruct.

8th. That the proceeds of all the properties of Mr. Garcia Maytin, which were about to be collected at the time when Mrs. Beatriz Alós died, and all appurtenances thereof, belong to the plaintiffs herein.

The defendants Mrs. Beatriz de los Angeles, widow of Mr. Alós, who is one of the heirs instituted by her daughter Mrs. Beatriz Alós de los Angeles in her will; the Succession of Mrs. José Caldas, constituted by his children Mrs. Angel, Mrs. Carolina and Mr. Francisco Caldas; Mr. Ramon Valdes; and Mr. José Quixano, in his own right and as representative of his minor children Miss Maria, Mr. Luis and Mr. Manuel Quixano y Alós, through their respective counsel, answered the complaint, opposing the same and praying that the same be dismissed with the costs against the plaintiffs, for the reasons and legal grounds which they deemed applicable to their right.

The case having been set down for trial and the evidence introduced, the court, after hearing the argument of counsel for the parties, rendered the following judgment:

Judgment.

No. 212.

MONSERRATE and DOMINGA GARCIA MAYTIN et al.

VS.

RICARDO VELA et al.

Action for the Nullity of a Will and of Certain Contracts and for the Recovery of Properties.

This case coming on to be heard on the 3rd of November 1905, in the regular course of setting, the parties appeared through their counsel, who announced — to be ready for trial. Thereupon the parties read their pleadings in proper order, presented their evidence which was duly heard except the testimony of only one witness which

was not heard. On the eleventh of November, 1905, the case was called again in open court to proceed with the trial of the same, and both parties appeared through their counsel, who announced to be ready for said trial. Thereupon the evidence which had not been heard was introduced and heard, and the parties argued the case, filing their briefs later on.

The court, after hearing the pleadings, the evidence and the arguments and after a proper consideration of the case, decides that it should render judgment, and it does render judgment, holding as follows:

108 That the court should condemn and does condemn the defendants, who are heirs of Mrs. Beatriz Alós, to wit: Beatriz de los Angeles, the widow of Mr. Alós, María, Luis and Manuel Quixano y Alós, to deliver to the plaintiffs Monserrate and Dominga García Maytín, within three days, the properties inherited by the said Mrs. Beatriz Alós from her daughter Mrs. Beatriz García y Alós, which properties had in turn been acquired by the latter as inheritance from her father Mr. Manuel García Maytín, and which are subject to be reserved in favor of the said plaintiffs Monserrate and Dominga García Maytín, who are sisters of the said Mr. Manuel García Maytín, and who have proven, in the opinion of the court, to be the only relatives within the third degree, living at the present time, and belonging to the line from which such property originated.

And the properties directed to be delivered to their legitimate owners, are the following:

(a) A coownership appraised in the value of \$7822.22, in Mexican currency, in a total value of \$22915, Mexican currency, in the estate Santa Rosa, situated in the ward of Juan Sanchez, containing eight hundred cuerdas of land, equivalent to 314 hectares, and 40 areas, and a two story dwelling house, three milling houses with straw roofs and milling implements, the sugar mills known as "San José" having been included within the bounds of the estate Santa Rosa, inasmuch as they are parts thereof, the said plantation or estate being bounded on the north by an estate known as "Pueblo Viejo" belonging to the Succession of ————; on the south, by property belonging to the Succession of Anastasio Maysonet; on the east by lands of the Succession of Antonio Calbranes; and on the west by property of Nicasio Quiñones and by the river, and

(b) The house marked with the number 75, of San Sebastian Street, in this City, bounded on the right, as one enters the premises, by property of Mrs. Antonia Loreda; on the left by property belonging to the police force; and at the rear, by the northern precinct; the said house has been appraised at five thousand pesos.

And the house marked with the number 75, of San Sebastian Street, which is directed to be restored, had been alienated by the said Mrs. Beatriz Alós, the value of the same is directed to be paid in lieu thereof, which value shall be ascertained by an appraisement made by three experts, one to be appointed by the plaintiffs, another to be appointed by the defendants and the other to be appointed by the court, the opinion of the majority to be accepted in case they fail

to reach a unanimous decision and the court further decides to deny the other petitions made in the complaint. The costs are imposed upon the defendants who are heirs of Mrs. Beatriz Alós. Let an execution be issued to satisfy this judgment, which shall be entered in the judgment book of this court.

Rendered in open court this 30th day of March, 1906.

Entered this 31st day of March, 1906.

EMILIO DEL TORO, *Judge*.

Mr. Nemesio Parex Moris, attorney for the plaintiffs Mrs. Dominga and Mrs. Monserrate Garcia Maytin, and for Mrs. Ana Marien y Davila, the latter as representative of her husband Mr. Angel Garcia Maytin, took an appeal from the foregoing judgment, and Mr. Wenceslao Bosch, attorney for the defendant Mrs. Beatriz de los Angeles, widow of Mr. Alós, took another appeal from the same judgment:

110 and the transcript of record having been filed in this court, the statement of facts and assignment of errors presented by counsel for the plaintiffs being included therein, as well as the bill of exceptions presented by the defendant Mrs. Beatriz de los Angeles Alós; who is also appellant, the said statement and bill of exceptions having been approved by the trial court, the parties filed their respective briefs, and a day was set for hearing, and at said hearing counsel for the parties argued the case and made the proper allegations on behalf of their respective clients.

The foregoing facts being laid down, let us examine now the questions raised in this case, which unfold and turn upon Sec. 811 of the former civil Code, which is equivalent to Sec. 799 of the Civil Code now in force. This Sec. 799 of the Civil Code now in force has been abrogated by a law of the Legislative Assembly, approved on the 8th of March 1906; but this fact has no effect whatever upon the decision of the questions at issue in this suit, for the reason that rights acquired under the force of the former Civil Code are concerned therein, and said rights cannot be deemed to have been extinguished by the said law of the Legislative Assembly, because the same is to be enforced from the date of the approval thereof, that is to say, from the 8th of March of the last year, and the said law has not a retroactive effect by virtue of the provision contained in Sec. 3 of the said revised Civil Code now in force.

Now, Sec. 811 of the former Civil Code which is equivalent to Sec. 799 of the Civil Code now in force, which section 799 has been abrogated, read as follows:

111 "The ascendant who inherits property from his descendant, acquired by the latter for a good consideration from another descendant, or from a brother or sister, is obliged to reserve the property, he may have acquired by force of law in favor of the relatives within the third degree belonging to the line from which such property originated."

Do those conditions take place in the present case?

Have the plaintiffs proven their right in accordance with the conditions required by the said Sec. 811 of the former Civil Code?

We think so with regard to Mrs. Dominga and Mrs. Monserrate

Garcia Maytin, who are two of the plaintiffs, herein because all of the conditions required for the existence of the right to have property reserved, provided for in the said section of the Code, are given with regard to the latter, inasmuch as the properties referred to were acquired by Mrs. Beatriz Alós de los Angeles, by operation of law, as heir abintestate of her daughter Mrs. Beatriz Garcia y Alós, who in turn acquired the same for a good consideration, that is to say, by intestate inheritance, from her father, Mr. Manuel Garcia Maytin, and the right to have property reserved is claimed precisely by two relatives constituted within the third degree of relationship, with Mrs. Beatriz Garcia y Alós, the duty to reserve the properties having originated at the demise of the latter, and the same was imposed by law upon Mrs. Beatriz Alós de los Angeles the mother and heir of Mrs. Beatriz Garcia y Alós, the aforesaid relatives belonging to the same line from which the properties claimed had originated; the foregoing conditions being those required by the said section 811 of the former Civil Code for the exercise of the *lineal or lineage right of reservation*, (*Reserva troncal ó lineal*),

112 which means the right to demand that certain properties be reserved in favor of relatives within the third degree, in accordance with said section 811 of the Spanish Civil Code (Translator's note,) both of which terms are given to said right by the text writers, which right was acknowledged for the first time in the Spanish legislation by Sec. 811 of the former Civil Code, from whence it came to form a part under No. 799 of the Civil Code now in force.

Such is the case with regard to Mrs. Dominga and Mrs. Monserrate Garcia Maytin; but the same conditions do not exist with regard to their brother Mr. Angel Garcia Maytin, who has not personally appeared nor through any legal representative, and whose existence has not been satisfactorily proven, for the reason that he absented himself from the Island more than thirty years ago, and no information has been received regarding him or his whereabouts; and although his wife Mrs. Ana Marién y Davila has appeared as his representative, such representation cannot be admitted for the reason that neither the law authorizes a married woman to represent her husband, but in very exceptional cases among which the case at bar is not included, nor the power conferred by the Judge upon Mrs. Ana Marién, and which the latter has proven, authorizes her for any other purpose than to appear in Court in her own behalf, but not in the name and as representative of her absent husband, for which purpose she was required to have a special authority conferred by the Judge with the proper formalities and requirements of law.

Therefore, the name of Mr. Angel Garcia Maytin, who has not appeared to exercise his rights, either personally or through any legal representative, is to be stricken out from the record of the case.

113 But such is not the case with regard to his sisters Mrs. Dominga and Mrs. Monserrate Garcia Maytin. The latter have appeared through their counsel Mr. Nemesio Perez Moris, who was sufficiently authorized by a power of attorney properly exe-

executed in his favor at the City and Court of Madrid, before a competent Notary, and legalized by the representative of the United States at that Court, and said plaintiffs have proven their rights by the proper certificates of birth showing that they are sisters by the same father and mother of the deceased Mr. Manuel García Maytín, and therefore, that they are relatives within the third degree of the deceased Mrs. Beatriz García y Alós, and they belong to the same line from which the properties claimed were originated, that is to say, to the paternal line of Mrs. Beatriz García y Alós because they are sisters of her deceased father Mr. Manuel García Maytín, which, as we have stated above, are the conditions required by Sec. 811 of the former Civil Code for the origin and exercise of the *lineal or lineage right of reservation*, referred to, and which constitutes the ground of the complaint presented in this case.

But, which are the properties which were subject to be reserved in favor of the plaintiffs Mrs. Monserrate and Mrs. Dominga García Maytín and which they have a right to demand in the case at bar?

In the judgment rendered by the Judge of the District Court of San Juan it is held, with regard to this point, that said properties are those inherited by Mrs. Beatriz Alós de los Angeles from her deceased daughter Mrs. Beatriz García y Alós and which the latter had acquired in her turn by intestate inheritance from her deceased father Mr. Manuel García Maytín, that is to say, a coownership for the value of 7822 pesos and 22 centavos, in Mexican currency,

in the total value of the estate "Santa Rosa", situated in 114 the ward of Juan Sanchez, in the municipal jurisdiction of Bayamon, and the house marked with the number 75 of San

Sebastian Street, of this City, appraised in the value of 5000 pesos, and that as the said house had been sold by Mrs. Beatriz Alós de los Angeles, the value thereof should be delivered by the defendant, which value was to be ascertained by an appraisalment made by experts in the manner stated in the said judgment.

However, one of the strongest objections to the judgment is made precisely upon this particular matter contained therein, by counsel for the defendant and appellant Mrs. Beatriz de los Angeles, widow of Mr. Alós, who is one of the heirs instituted by the deceased Mrs. Beatriz Alós de los Angeles, in her will.

The learned Counsel for the said appellant states in his brief with regard to this point, reproducing what he had said regarding this matter in his answer to the complaint, that although Mrs. Beatriz Alós de los Angeles who was bound to reserve the property, had been acknowledged as the heir abintestate of her daughter Mrs. Beatriz García y Alós, she had not been the absolute heir of all her properties, because the legal portion belonging to the widower Mr. Lorenzo Ruiz Ibarra upon one third of the inheritance of his deceased wife Mrs. Beatriz García y Alós was reserved to him, and said legal portion should be deducted from the total amount of the inheritance in order to ascertain the liquidated part belonging by inheritance to Mrs. Beatriz Alós de los Angeles as heir abintestate of her aforesaid daughter Mrs. Beatriz García y Alós, and that, in consequence, the properties which in any case were subject to be

115 reserved by Mrs. Beatriz Alós de los Angeles, in favor of the relatives within the third degree belonging to the paternal line of her aforesaid daughter, were not all the properties which constituted the inheritance of the latter, but the liquidated part thereof belonging to her after deducting one third of the inheritance as legal portion belonging to the surviving spouse Mr. Lorenzo Ruiz Ibarra; and as the said liquidation had never been made, and as Mrs. Beatriz Alós had taken possession of all the properties belonging to her daughter and had recorded the same in her favor in the Registry of Property without making any specification whatever with regard to the properties subject to be reserved and the respective value thereof, as prescribed in Sec. 199 of the Mortgage Law in connection with Sec. 201 of the Regulations thereof, the consequences thereof lead to such a confusion that the same does not allow to ascertain in the present case either the amount or the specification of the properties which might belong to the plaintiffs Mrs. Dominga and Mrs. Monserrate García Maytín, and which, therefore, prevents the latter from exercising lawfully the right which they have exercised in the complaint.

But this argument of counsel for Mrs. Beatriz de los Angeles, widow of Mr. Alós, lacks sound basis and grounds.

According to Sec. 811 of the former Civil Code, which in the year 1891, when Mrs. Beatriz García y Alós died, was already in force in this Island, the ascendant who inherited property from his descendant, acquired by the latter for a good consideration from another descendant or from a brother or sister, was obliged to reserve the property which he had acquired by force of law, in favor of the relatives within the third degree belonging to the same line from which such property originated.

Therefore, the properties which, according to the said section of the Code, Mrs. Beatriz Alós de los Angeles was obliged to reserve in favor of the relatives within the third degree of her daughter Mrs. Beatriz García y Alós, were the properties which she had inherited from the latter by force of law, and as the properties which Mrs. Beatriz Alós inherited from her daughter Mrs. Beatriz García, by force of law, were all the properties constituting the inheritance of her aforesaid daughter, for the reason that, she being the only heir abintestate of the latter, she had a right to inherit, by direct provision of law, all the properties belonging to the said daughter, without deduction of any kind whatever, because the portion reserved to the widower Mr. Lorenzo Ruiz Ibarra, did not confer upon him the ownership of any of the said properties, but the usufruct of one third of the inheritance of his deceased wife, that is to say, the right to receive during his life one third of the proceeds thereof, the full ownership of all the properties of the inheritance remaining in favor of the heir Mrs. Beatriz Alós de los Angeles, without prejudice to the right of the latter to pay off the burden constituted by the usufruct, in the form best suitable to her interests, but without injuring in the least the rights of the relatives in whose favor the ownership of the said properties should have been reserved by her; therefore, it is evident that the obligation to reserve certain properties imposed by law upon the said Mrs.

Beatriz Alós de los Angeles embraced all the properties which the latter had inherited from her deceased daughter Mrs. Beatriz García y Alós, said properties being exactly the same which the latter had acquired by intestate inheritance from her father Mr. Manuel García Maytín, inasmuch as it has not been proven that she possessed any other property, the only exception being made with regard to
 117 the carts and plows which were awarded to her in the proper schedule, it being unknown whether or not the same were in her possession at the time of her demise.

Therefore, we are entirely in accord in regard to this point, with the judgment rendered by the Judge of the District Court of San Juan, in holding that the properties which should be delivered to the plaintiffs Mrs. Dominga and Mrs. Monserrate García Maytín are those inherited by Mrs. Beatriz Alós de los Angeles from her daughter Mrs. Beatriz Gracie y Alós and which the latter had acquired in her turn by intestate inheritance from her deceased father Mr. Manuel García Maytín; that is to say, the house marked with the number 75 of San Sebastian Street, of this City, and her coownership in the estate "Santa Rosa", it having been proven in this case, with regard to the said properties, by the entries made in the Registry of Property of this City, that Mrs. Beatriz Alós recorded the same in her favor as intestate inheritance from her daughter the said Mrs. Beatriz García y Alós.

It is of no avail to argue that plaintiffs, García Maytín sisters, in this suit, cannot claim the said properties as properties subject to be reserved by the failure of Mrs. Beatriz Alós, as well as by that of the said plaintiffs to institute the proceedings provided for in Sec. 199 of the Mortgage Law, and in those of the Regulations which have reference thereto, to make it appear in the Registry of Property that the said estates were subject to be reserved; the reason being, that although the purpose of the said proceedings is to make it appear in the Registry of Property, what properties are subject to be reserved and the value thereof the law does not require the said proceedings to be necessarily instituted as a requisite for the exercise
 of the *right of reservation by the relatives* in whose favor the

118 law creates the same, but as a security which the Mortgage Law seeks to establish in behalf of the same persons in whose favor the properties are to be reserved, in order that third persons trying to acquire any property right in the said estates may know that they are subject to be reserved and the liabilities which may be incurred by them regarding the Person or persons in whose favor the said reservation shall have been made.

Of course, if the fact that the property is subject to be reserved has not been made to appear in the Registry of Property, the persons in whose favor the same was to be reserved cannot assert their right against the third persons who have acquired the properties free from encumbrances, from the person or persons who, according to the Registry, appeared as owners thereof, and, consequently, as having a right to transfer the same without any risk whatsoever; but that does not mean that by the failure to make it appear in the Registry that the property was subject to be reserved, the interested parties lack action against the ascendant who was bound to reserve

the same, or against his or her successors possessing such property, to claim the same, and damages in a proper case, for the reason that said ascendant or his or her successors, cannot be considered as *third parties*, within the meaning of this phrase as used in the Mortgage Law, with regard to the relatives in whose favor the law creates the right to have the property reserved, and it is well settled that rights are not extinguished as between the parties for the failure to make the same appear in the Registry of Property.

As for the other matters, we have already stated and do state again, that the fact of making it appear in the Registry that the

property was subject to be reserved does not give the relatives
 119 the right to claim the same, but such right has its source in the law itself, the former requisite being simply a security or guarantee established by the Mortgage law in behalf of the persons in whose favor such property is to be reserved to enable them to assert their rights against the third parties; and, in consequence, though such right had not been made to appear in the Registry, nor any of the requisites prescribed by the Mortgage Law to make the same appear in the Registry shall have been complied with, this fact does not prevent Mrs. Dominga and Mrs. Monserrate Garcia Maytin from asserting their right against Mrs. Beatriz Alós de los Angeles, or against her successors as in the case at bar.

Another point made by counsel for the appellant, Mrs. Beatriz de los Angeles, widow of Mr. Alós against the action brought by Mrs. Dominga and Mrs. Monserrate Garcia Maytin, and, consequently, against the judgment rendered in this case by the District Court of San Juan which in this regard sustained the claim made by the plaintiffs, makes reference to the extinction, by prescription, of the right exercised by the said sisters, for the reason that they have failed to assert the same for the lapse of time which runs from the 28th of September, 1891,—the date of the demise of Mrs. Beatriz Garcia y Alós, the right to have the property reserved in favor of the relatives within the third degree of the paternal line of the latter having arisen on the same date,—until the 29th of October, 1901, which is the date of the filing of the complaint in this case, that is to say, for more than fourteen years which is a lapse of time longer than that which is required to consider the action brought by the plaintiffs as extinguished by prescription, in accordance with Sec. 1957 of the Spanish Civil Code, as changed by the General Order of the 4th of April, 1899, in connection with section 1963 of the said Spanish Civil Code.

120 That is to say, the action brought by Mrs. Dominga and Mrs. Monserrate Garcia Maytin is deemed to have been extinguished by prescription for the reason that they have failed to assert their rights for a lapse of time longer than six years, which is the term allowed by the General Order of the 4th of April 1899, for ordinary prescription of ownership and other property rights in real estate.

But as this objection has been raised for the first time in the brief filed in this court by counsel for the appellant Mrs. Beatriz de los Angeles Alós, it cannot be taken into consideration and as the

said objection was not made in proper time in the answer to the complaint, in the form and manner provided for in Sec. 128 of the Code of Civil Procedure now in force, the same cannot be made the subject of discussion and decision by this Court.

It is true that Counsel for the defendants repeatedly alleged before the lower Court that neither Mrs. Dominga nor Mrs. Monserrate Garcia Maytin, nor their brother Mr. Angel Garcia Maytin, had ever tried to demand the constitution of the mortgage or to make their right to have the properties reserved in their favor to appear in the Registry of Property, in accordance with the prescription contained in Sections 168 and 199 of the Mortgage Law, and sections 201 to 206 of the Regulations which have reference thereto; but said allegation was made to attack whatever effect might have the right exercised in the complaint by Garcia Maytin sisters as against the third parties who had acquired in good faith any property right in the said estates, the fact that said properties were subject to be reserved being unknown to them for the reason that it was not made to appear in the Registry; but the said allegation was

not made to oppose the complaint with regard to the prescription of the action exercised therein on account of the failure of the plaintiffs to bring the same within the fourteen years which elapsed from the 28th of September 1891, which is the date of the demise of Mrs. Beatriz Garcia y Alós, and of the origin of the obligation to reserve the properties, imposed by law upon her mother Mrs. Beatriz Alós de los Angeles, by accepting the intestate inheritance from her daughter until the 14th of November, 1904, the date of the filing of the complaint which lapse of time is longer than that which is required to consider the action as extinguished by prescription, in accordance with the general order of the 4th of April, 1899, which allowed six years for the ordinary prescription of ownership and other property rights in real estate, and, consequently, for the extinction of the said rights, by prescription, in cases where the same are not exercised within the said term of six years, which are the allegations made by counsel for the appellant Mrs. Beatriz de los Angeles, widow of Mr. Alós.

But let us grant that such objection might be the subject of discussion before this Court, although the same was not made in the lower Court; even in that case, the said objection could not be sustained to dismiss the complaint.

Prescription as a means to acquire ownership cannot be mistaken for prescription as a means to lose ownership. Possession for ten years as to persons present, and for twenty years with regard to those absent, with good faith and with a proper title, was sufficient to obtain the former, in accordance with Sec. 1957 of the former Civil Code; but, for the latter, that is to say, in order that an action might be deemed extinguished by prescription, it was necessary that the owner of the estate should allow thirty years to elapse without bringing or exercising his action, in accordance with Sec. 1963 of the said Code; but, as it was liable to happen that in the course of the latter term, a third party might acquire the ownership of the estate, by possession for ten years as

to persons present, or for twenty years with regard to those absent, with good faith and with a proper title, as provided for in the said Sec. 1957, in such case it is evident that the real owner of the estate shall have lost his right on account of the failure to assert the same during that time, and that he could not resort to the said section 1963 to request that his action be not deemed extinguished by prescription for the reason that thirty years had not elapsed.

For this reason, Sec. 1963 just referred to, which, in the first paragraph thereof, states that real actions with regard to real property prescribe after thirty years, provides in the second paragraph thereof, the exception that this *provision is to be understood without prejudice to the prescriptions relating to the acquisition of ownership and other property rights by prescription*: which undoubtedly makes reference to Sec. 1957, which allowed a term of ten years as to persons present and of twenty years with regard to those absent, with good faith and with a proper title, for the ordinary prescription of ownership and other property rights in real estate.

But there came later the General Order of the 4th of April 1899, which changed Sec. 1957 of the Civil Code, and by said General Order the term for the ordinary prescription of ownership and other property rights, with good faith and with a proper title, was limited to six years as to persons present and absent, but without modifying or changing in the least the other Sec. 1963 referred to

123 which allowed a term of thirty years for the prescription of real actions with regard to real property, the said section being continued in force, though still subject to the exception contained in the second paragraph thereof: regarding the prescriptions relating to the acquisition of ownership and other property rights by prescription, and the said exception after the publication of the General Order referred to, was of course to be construed in connection with the provision contained in the said General Order, regarding the acquisition of ownership and other property rights in real estate by possession for six years with good faith and with a proper title; but, as in the case at bar, the prescription is not alleged as a means to acquire ownership or any other property right, but the prescription alleged is that of the real action of ownership exercised in the complaint, therefore we come to the conclusion that the action of ownership exercised in the complaint by the plaintiffs Mrs. Dominga and Mrs. Monserrate Garcia Maytin has not been extinguished by prescription for the reason that from the year 1891—date of the demise of Mrs. Beatriz Garcia y Alos, when her mother Mrs. Beatriz Alos de los Angeles inherited her estate, in which moment the obligation to reserve the properties imposed upon the latter by Sec. 811 of the Civil Code then in force had arisen—until the date of the filing of the complaint, thirty years have not elapsed, which is the term allowed by Sec. 1963 of the former code which is equivalent to Sec. 1864 of the code now in force, for the prescription of the action of ownership and of other property rights.

The foregoing points being settled, let us now examine the other questions raised in the brief filed by counsel for the appellants

Mrs. Dominga and Mrs. Monserrate Garcia Maytin, which, having been raised and discussed in proper time in the lower court, may be the subject of discussion and decision by this Court.

124 The said appellants attack the judgment rendered in this case, for the reason among others, that the District Judge confined himself to hold that the properties which should be delivered to the plaintiffs were only those inherited by Mrs. Beatriz Garcia y Alós from her father Mr. Manuel Garcia Maytin, that is to say, the properties which were awarded to her in the proper schedule, which are described in the judgment, and which amount to the sum of 13018 pesos and 22 centavos, the said Judge failing to hold that the properties to be delivered to the said plaintiffs were all the properties constituting the estate of Mr. Manuel Garcia Maytin, which, as maintained by the plaintiffs, came to be the property, by force of law, of his daughter Mrs. Beatriz Garcia, without deduction of any kind whatsoever. But in order to make such a declaration it would be necessary to hold that the testamentary proceedings which took place at the demise of Mr. Manuel Garcia Maytin, and which were approved by an order of the Judge of First Instance of the Cathedral District of this City, entered on the 4th of February, 1887, are null and void and without any effect whatsoever, but the plaintiffs Mrs. Dominga and Monserrate Garcia Maytin cannot request such a declaration to be made because said partitions have acquired a settled and binding character for the reason that the term of four years allowed by Sec. 1076 of the Civil Code then in force to oppose the same, has elapsed, and as no opposition to said partitions had ever been made by the heir Mrs. Beatriz Garcia y Alós, who was the only person having a right thereto, either prior or after her marriage with Mr. Lorenzo Ruiz Ibarra, who had also a right to make the said opposition as representative of the rights

of his wife, it is evident that said partition proceedings of 125 the testamentary of Mr. Manuel Garcia Maytin cannot be attacked at the present time by the plaintiffs herein who, at the time of the demise of their brother Mr. Manuel Garcia Maytin, or at the date on which the said partitions were approved, had not acquired any right whatever to have the properties of the latter reserved in their favor, inasmuch as the Civil Code which by Sec. 811 created said right for the first time had not been published at that time nor did it go into effect in this Island until the year 1889, nor had said right been acquired by them at the latter date, but until the 28th of September 1891, on which date their niece Mrs. Beatriz Garcia died intestate, and all the estates belonging to the same came to be the property of her mother Mrs. Beatriz Alós de los Angeles, from which date, until the filing of the complaint, nearly fourteen years have elapsed, which is a term longer than that which is required for the prescription of actions for nullity of contracts, which could only be exercised within four years, in accordance with Sec. 1301 of the former Civil Code, this being so in case the partitions were subject to be attacked by them at the former date, the said partitions having acquired a settled and binding character by consent of the only person who could attack the same.

Nor are of greater force the allegations made by the plaintiffs and appellants to attack the alienations and other contracts executed by Mrs. Beatriz Alós de los Angeles with regard to the properties inherited by Mrs. Beatriz García from her father Mr. Manuel García Maytín, which properties were actually subject to be reserved in favor of the said plaintiffs, and, also with regard to the other properties which were awarded to Mrs. Beatriz Alós de los Angeles for

126 the payment of the liabilities of the testamentary of her deceased husband, for the reason that the plaintiffs having failed to take any steps whatsoever to secure the inscription or entry of their right to have the properties reserved in their favor, in the Registry of Property, cannot prejudice the third parties, who acquired said properties from Mrs. Beatriz Alós de los Angeles, who had the same recorded in her favor, and who could transfer the same without any risk whatever, in accordance with Sec. 34 of the Mortgage Law now in force, subject to the obligation imposed by law upon Mrs. Beatriz Alós, who should have reserved the property to indemnify the persons in whose favor the same were to be reserved, for the value of the properties alienated, in accordance with the prescription regarding this matter contained in Sec. 38 of the said law, which section has been properly applied by the Judge of the District Court of San Juan in the judgment rendered by him, by directing the heirs of Mrs. Beatriz Alós de los Angeles to indemnify the plaintiffs Mrs. Dominga and Mrs. Monserrate García Maytín, for the value of the house marked with the number 75 of San Sebastian Street, which cannot be restored to them because the said Mrs. Beatriz Alós sold the same to Mr. José Caldas, whose title cannot be revoked for the reason that said title was acquired from a person who, according to the Registry, had a right to transfer the same.

The same is true with regard to the prayer made by the plaintiffs for the annulment of the will executed by Mrs. Beatriz Alós de los Angeles some time prior to her demise, for the disposal made thereby of properties whose ownership did not belong to her; for the reason that the fact on which the petition is made is inaccurate because

127 Mrs. Beatriz Alós has not disposed in favor of any person whatever of the properties subject to be reserved, and even if she had made such a disposal, this fact would not constitute a proper cause to request the annulment of a will executed with all the formalities prescribed by law, and mainly as they absolutely lack any title or right to attack the force thereof, inasmuch as they are not relatives of the testatrix Mrs. Beatriz Alós, and have no right to inherit the whole or part of her estate, nor have they any other legitimate right to attack the effect of its provisions.

The main objections made to the judgment rendered in this case by the District Court of San Juan having been discussed, the opinion of the Court is to the effect that said judgment must be affirmed in all its parts, without making any special condemnation as to the costs of the appeal.

(Signed)

JOSÉ S. QUIÑONES,
Chief Justice.

In the Supreme Court of Porto Rico.

No. 65.

MONSERRATE and DOMINGA GARCIA MAYTIN, Plaintiffs, Appellants,
and Appellees,

vs.

BEATRIZ DE LOS ANGELES, Widow of Mr. Alós, Defendant, Appellee,
and Appellant.

Appeal Taken from a Judgment Rendered by the District of San
Juan in an Action Regarding the Nullity of a Will and Other
Particulars.

Judgment.

SAN JUAN, PORTO RICO, June 25th, 1907.

128 This court has carefully reviewed the transcript of record presented for the appeal taken in the above entitled case, and has duly considered the briefs and argument of counsel for both parties appellants in support of their respective claims; and for the reasons given in the opinion filed with this judgment, decides to affirm and it does affirm in all its parts, the judgment rendered in said case, on the 30th of March, 1906, by the District Court for the Judicial District of San Juan, and from which judgment this appeal is taken, without any special condemnation as to the costs of this appeal.

It is further ordered that a copy of this judgment together with a copy of said opinion filed herewith, be transmitted to the Court referred to for the information thereof and for the proper action.

Thus we pronounce, command and sign.

JOSÉ S. QUIÑONES.

JOSÉ C. HERNANDEZ.

J. H. MacLEARY.

JOSÉ M. FIGUERAS.

ADOLPH G. WOLF.

129

In the Supreme Court of Porto Rico.

MONSERRATE and DOMINGA GARCIA MAYTIN and ANA MARIEN Y Davila, the Latter as Representative of Her Husband, Mr. Angel Garcia Maytin, Plaintiffs.

vs.

RICARDO VELA, THE HEIRS OF BEATRIZ ALÓS, THE SUCCESSION OF José Caldas y Caldas, and Other Unknown Persons, Defendants.

Action Relating to the Annulment of a Will and of Certain Contracts
and for the Recovery of Properties.

Notice of Appeal.

Now come the plaintiffs, through the undersigned Attorney, and respectfully state:

That they take an appeal from the judgment rendered in the

above entitled case to the Supreme Court of the United States and pray the Hon. Court to allow them the same term which was allowed to the defendant Mrs. Beatriz de los Angeles, widow of Mr. Alós, to perfect the appeal and execute a bond, if required, in case the appeal taken by the said defendant shall not be dismissed, as requested by the plaintiffs.

And they pray the Hon. Court to grant said petition as prayed for.
San Juan, Porto Rico, August 30th, 1907.

N. PEREZ MORIS,

Attorney for Plaintiffs.

I hereby accept service of this notice together with a copy thereof this 30th day of August, 1907.

130

WENCESLAO BOSCH,

Attorney for Mrs. Beatriz de los Angeles, Widow of Mr. Alós.

I hereby accept service of this notice together with a copy thereof this 30th day of August, 1907.

EDUARDDO ACUÑA,

Attorney for the Minors Quirano.

I hereby accept service of this notice, together with a copy thereof this 30th day of August, 1907.

F. DE LA TORRE,

Attorney for Ramón Valdés.

131

In the Supreme Court of Porto Rico.

Appeal Taken from a Judgment Rendered by the District Court of San Juan.

MONSERRATE and DOMINGA GARCIA MAYTIN et al., Plaintiffs, Appellants and Appellees,
vs.

BEATRIZ DE LOS ANGELES, Widow of Mr. Alós et al., Defendants, Appellees and Appellants.

Action for the Annulment of a Will and Other Particulars.

Order.

SAN JUAN, PORTO RICO, *October 10th, 1907.*

The appeal taken by counsel Nemesio Perez Moris, to the Supreme Court of the United States, from the judgment rendered by this Court on the 25th of June last, in the above entitled case, is hereby allowed; the amount of the bond to be executed by the plaintiffs and appellants Monserrate Garcia Maytin et al. to answer all damages and costs which may be caused to the appellees by virtue of said appeal, is fixed in the sum of one thousand dollars, said bond

to be executed with two or more sureties, to be approved by the Chief Justice of this Court; and a term of sixty days is allowed for the preparation and translation of the record to be transmitted to the Supreme Court of the United States; and the petition made by the plaintiffs on the 20th of September last, requesting the execution of the judgment rendered in this case to be decreed, is hereby denied.

132 It was agreed upon by the court and signed by the Justices of the Supreme Court.

JOSÉ S. QUISONES.
 JOSÉ C. HERNANDEZ.
 J. H. MACLEARY.
 JOSÉ MA. FIGUERAS.
 ADOLPH G. WOLF.

133 In the Supreme Court of Porto Rico.

MONSERRATE and DOMINGA GARCIA MAYTIN and ANA MARIEN Y Davila, the Latter as Representative of Her Husband, Mr. Angel Garcia Maytin, Plaintiffs,

VS.

RICARDO VELA, THE HEIRS OF MRS. BEATRIZ ALÓS, THE SUCCESSION of José Caldas y Caldas, Ramon Valdes and Other Unknown Persons, Defendants.

An Action Relating to the Annulment of a Will and of Certain Contracts and for the Recovery of Properties.

Now came the plaintiffs through the undersigned attorney, and pray the Honorable Court to reduce the amount fixed for the bond to be executed by the plaintiffs for the prosecution of the appeal taken by them in the above entitled case, basing their petition on the fact that a bond of five hundred dollars has been required by this Court in cases of the same, or of greater importance than the present case.

Therefore, the plaintiffs pray the Honorable Court to fix the amount of five hundred dollars for the bond to be executed by them for the prosecution of the appeal taken by the same.

San Juan, P. R., November 4th, 1907.

N. PEREZ MORIS,
Attorney for Plaintiffs.

We hereby accept service of this petition together with a copy thereof this 6th day of November, 1907.

F. DE LA TORRE,
 WENCESLAO BOSCH,
Attorney for the Defendants.

EDUARDO ACUSA,
 By R. PALACIOS RODRIGUEZ,
Attorney for the Minors, Quixano.

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SAN JUAN, PORTO RICO, November 7, 1907.

Motion granted.

It was agreed upon by the Court and the Chief Justice attaches this rubric; I attest. There is a rubric.

A. F. CASTRO, *Sec'y.*

I Ernest Jaenecke, Official Interpreter and Translator of the Supreme Court of Porto Rico, do hereby certify; that the above and foregoing documents are true and faithful translations of their respective Spanish originals.

In witness whereof, I hereunto set my hand at the city of San Juan, Porto Rico, this 13th day of January, 1908.

E. JAENECKE,
*Official Interpreter and Translator
of the Supreme Court of P. R.*

135

Supreme Court of Porto Rico.

DOMINGA and MONSERRATE GARCIA MAYTIN et al., Plaintiffs and Appellants,

v.

BEATRIZ DE LOS ANGELES, Widow of Mr. Alós et al., Defendants and Appellees.

Assignment of Errors.

And now come the said plaintiffs Dominga and Monserrate Garcia Maytin, by Mr. Nemesio Perez Noris, their counsel, and say; that in the record and proceedings of said court in the above entitled cause and in the final judgment made and entered therein there is manifest error, and for error the said plaintiffs assign the following:

1st. The court erred in holding that the properties which should be delivered to the plaintiffs Mrs. Dominga and Mrs. Monserrate Garcia Maytin were only those inherited by Mrs. Beatriz Garcia y Alós from her father Mr. Manuel Garcia Maytin, that is to say, the properties which were awarded to the latter in the schedule made in her favor in the liquidation and partition of the estate of the said Mr. Manuel Garcia Maytin.

2nd. The court erred in not holding that the properties to be delivered to the said plaintiffs, by virtue of the action brought herein, were all the properties constituting the estate of Mr. Manuel Garcia Maytin, which ownership, by force of law, fully belonged to his daughter Mrs. Beatriz Garcia y Alós, without deduction of any kind whatsoever.

3rd. The court erred in holding that the partitions made with regard to the estate of Mr. Manuel Garcia Maytin are legal and effective, and that the same are not subject to review at the present time.

4th. The court erred in not holding that said partitions of the said

estate are null and void, and without any effect whatsoever.
136 by reason of frauds committed therein, by stating as liabilities of the said estate, certain debts which did not actually exist, the minor Beatriz Garcia's interest being greatly defrauded thereby.

5th. The court erred in not holding that the award made in favor of Mrs. Beatriz Alos de los Angeles for the payment of the liabilities of the estate involved in the testamentary proceedings of Mr. Manuel Garcia Maytin is null and void, the said award being in the nature of a sale or alienation of properties belonging to a minor, which should have been made in accordance with section 2011 and following, of the Spanish Law of Civil Procedure, then in force, and under the authority of court, and by public auction.

6th. The court erred in holding that the action brought by the plaintiffs herein for the annulment of the said partitions of the estate of Mr. Manuel Garcia Maytin was barred by prescription.

7th. The court erred in holding that the term of four years allowed by the Spanish Civil Code to bring the action for nullity of acts or contracts should be counted from the date on which said acts or contracts were executed and perfected, and in not holding that said term is to be counted from the date on which said contracts are definitely concluded, that is to say, from the date on which all the acts originating from the said contracts have been fully executed and fulfilled.

8th. The court erred in not holding that the alienations and other contracts executed by Mrs. Beatriz Alos de los Angeles with regard to the properties inherited by Mrs. Beatriz Garcia from her father Mr. Manuel Garcia Maytin, and which properties, as held by the Supreme Court, were actually subject to be reserved in favor of the said plaintiffs, and the alienations made also with regard to the other properties which were awarded to the said Mrs. Beatriz Alos de los Angeles for the payment of liabilities, are null and void and without any effect whatever.

137 9th. The court erred in holding that the plaintiffs herein lack action against the third persons who had acquired from Mrs. Beatriz Alos any property belonging to the inheritance of Mr. Manuel Garcia Maytin and who had the same properly recorded in the Registry of Property.

10th. The court erred in not holding that the will executed by Mrs. Beatriz Alos de los Angeles on the 9th of September, 1904, before Mr. Thomas Valdejuli, a Notary Public, was null and void and without any effect whatever.

For other errors appearing upon the record.

Wherefore, complainants pray that said findings above complained of may be reversed and that the said court may be directed to enter a judgment in full accord with the prayer of their complaint.

(Signed)

N. PEREZ MORIS,
Attorney for Appellants.

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In the Supreme Court of Porto Rico.

UNITED STATES OF AMERICA :

The President of the United States.

Bond on Appeal to the Supreme Court of the United States.

Know all men by these presents, that We, Eudocio de la Cuetara and Fernando Schluter, are held and firmly bound unto Ricardo Vela, Jose Quijano, heirs of Beatriz Alós, succession of Jose Caldas Ramon Valdes, et al., in the full and just sum of five hundred (\$500.00) dollars to be paid to the said named persons, their certain attorneys, executors, administrators or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 14th day of December, in the year of Our Lord, one thousand nine hundred and seven.

Whereas, lately at a session of the Supreme Court of Porto Rico in a suit pending in said Court, between Monserrate and Dominga Garcia Maytin, and Ana Marien y Davila, the latter as representative of her husband Mr. Angel Garcia, Plaintiffs, and Ricardo Vela, Jose Quijano, heirs of Beatriz Alós, succession of Jose Caldas, Ramon Valdes, et al., Defendants, a Judgment was rendered against the said Plaintiffs and the said Plaintiffs having obtained an appeal to the Supreme Court of the United States to reverse the judgment in the aforesaid suit, and a citation directed to the said Defendants, citing and admonishing them to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington, District of Columbia.

Now, the condition of the above obligation is such, that if the said Plaintiffs shall prosecute said appeal to effect, and answer
 139 all costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

EUDOSIO CUETARA,
 F. SCHLUTER.

The above instrument has been signed before me, by Mr. Eudocio de la Cuetara and Fernando Schluter, known to me, this 14th day of December, 1907.

ENRIQUE GONZALES DARDER,
Notary Public.

Approved this 14th day of December, 1907.

JOSE S. QUIÑONES,

Chief Justice, Supreme Court of P. R.

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The Supreme Court of the United States.

UNITED STATES OF AMERICA,
District of Porto Rico:

The President of the United States to Ricardo Vela, José Quijano, Heirs of Beatriz Alós, Succession of José Caldas, Ramon Valdés, et al., and to Wenceslao Bosch, Eduardo Acuña, and Francisco de la Torre, Their Attorneys.

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington, D. C., within sixty days from the date of this writ, pursuant to an appeal filed in the Office of the Secretary of the Supreme Court of Porto Rico, in a certain cause pending before said Court, wherein Monserrate and Dominga Garcia Maytin, and Ana Marién y Dávila, the latter as representative of her husband Mr. Angel Garcia, are Plaintiffs and appellants, and Ricardo Vela, José Quijano, heirs of Beatriz Alós, Succession of José Caldas, Ramón Valdés, et al., are Defendants and appellees, to show cause, if any there be, why the Judgment rendered against the said Plaintiffs and appellants, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. José S. Quiñones, Chief Justice of the Supreme Court of Porto Rico, at the City of San Juan, Porto Rico, this 14th day of December, A. D., 1907.

[Seal Supreme Court of Porto Rico, United States of America.]

JOSÉ S. QUIÑONES,
Chief Justice.

Attest:

A. F. CASTRO,
Secretary of the Supreme Court of Porto Rico.

F. DELATORRE.
 EDUAR ACUÑA.
 WENCESLAO BOSCH.

Received this writ on 14th Dec. 1907, and served the same by delivering a true copy thereof to Wenceslao Bosch, Eduardo Acuña and Francisco de la Torre, as attorneys for defendants. This at San Juan, P. R., Dec. 14, 1907.

S. C. BOSHNELL, *Marshall.*

141 In the Supreme Court of Porto Rico.

No. 65.

MONSERRATE and DOMINGA GARCIA MAYTIN et al., Plaintiffs,

vs.

RICARDO VELA et al., Defendants.

Precept.

The Secretary of the Court:

You will please to prepare a transcript of record to be filed in the Supreme Court of the United States, pursuant to the appeal taken by the plaintiffs in the above entitled case, said transcript to contain the following papers and no other.

1. Amended complaint.
2. Answer of Ramon Valdes.
3. Answer of the Succession of Jose Caldas y Caldas and Mrs. Beatriz de los Angeles, the widow of Mr. Francisco Alós, dated the 10th of May, 1905, including also the answer of the said defendant, dated the 9th and 20th of December, 1904, and 18th of January, 1905.
4. Answer of Mr. Jose Quijano.
5. Judgment of the District Court of San Juan.
6. Notice of appeal to the Supreme Court of Porto Rico.
7. Statement of facts.
8. Opinion and Judgment rendered by the Supreme Court of Porto Rico.
9. Notice of appeal to the Supreme Court of the United States.
10. Order allowing appeal.
11. Motion to reduce bonds, and order allowing same.
12. Citation.
13. Bond on appeal.
14. Assignment of errors.

Respectfully,

N. PEREZ MORIS,
Attorney for Appellant.

142 UNITED STATES OF AMERICA:

Supreme Court of Porto Rico.

I, Antonio F. Castro, Secretary of the Supreme Court of Porto Rico, do hereby certify: that all of the foregoing documents are found in, and form part of the record in a certain cause lately pending in said Supreme Court wherein Monserrate and Dominga Garcia Maytin et al., are Plaintiffs and appellants, and appellees, and Ricardo Vela, the Heirs of Mrs. Beatriz Alós, et al. are Defendants and appellees and appellants; that of such documents those whose originals have been written in the English language are true and correct transcripts therefrom and of the whole thereof, and such documents

as have been originally written in the Spanish language, have been truly and faithfully translated into the English language, according to the certificate of the Official Interpreter and Translator of this Court, which forms a part of this record; and that this record has been prepared in accordance with the *preacipe* filed by counsel for appellant herein.

In testimony whereof, I hereunto set my hand and the seal of said Supreme Court, at San Juan, Porto Rico, this 18th day of January in the year of our Lord one thousand nine hundred and eight.

[Seal Supreme Court of Porto Rico, United States of America.]

A. F. CASTRO,

Secretary of the Supreme Court of Porto Rico.

[Revenue stamp, canceled. January, 1908. M. A.]

Endorsed on cover: File No. 21,051. Porto Rico Supreme Court. Term No. 90. Monserrate Garcia Maytin, Dominga Garcia Maytin, et al., appellants, vs. Ricardo Vela, Jose Quijano, et al. Filed March 2d, 1908. File No. 21,051.

WITNESS FOR THE PEOPLE

CHARGE OF MURDER

No. 90

MONSIEUR GABRIEL MARTIN ET AL. ACCUSÉS

DE

RICARDO VELAZQUEZ AL. ACCUSÉ

DE

No. 91

DEATH OF LOS ANGELES WOMAN OF ASIAN

ORIGIN

DE

MONSIEUR GABRIEL MARTIN ET AL. ACCUSÉS

DE

DEATH OF LOS ANGELES WOMAN OF ASIAN

ORIGIN

DE

W. H. K. WATSON

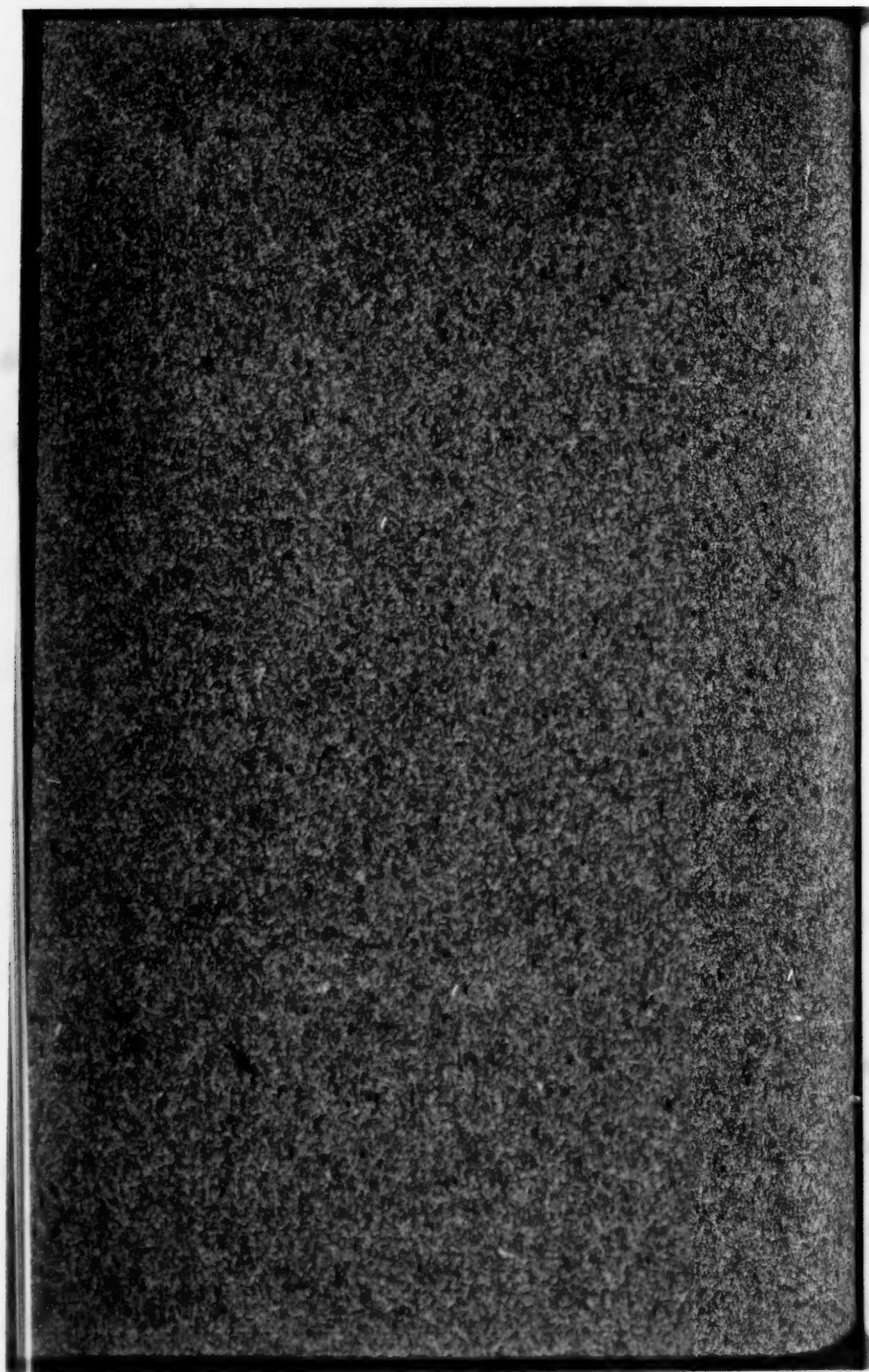
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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 90.

MONSERRATE GARCIA MAYTIN ET AL., APPELLANTS,

vs.

RICARDO VELA ET AL., APPELLEES,

AND

No. 245.

BEATRIX DE LOS ANGELES, WIDOW OF ALOS,
APPELLANT,

vs.

MONSERRATE GARCIA MAYTIN ET AL., APPELLEES.

STATEMENT.

The suit which is now before this court on these appeals originated in the District Court for the Judicial District of San Juan, which is one of the insular courts of original jurisdiction in Porto Rico, and the present appellants in No. 90 were the original plaintiffs. The judgment of the trial court was partly in favor of the plaintiffs and partly

in favor of defendants. From that part not favorable to them the plaintiffs appealed to the Supreme Court of Porto Rico, which court affirmed the judgment of the court below, and from that judgment of affirmance the plaintiffs are now appellants in this court.

Mrs. Beatrix de los Angeles, one of the several defendants in the trial court, has brought to this court a cross-appeal. No. 245 of the docket, which we earlier filed a motion to dismiss; and, in the order made upon that motion, postponing its consideration to the hearing on the merits, this court directed that the two appeals be considered together whenever No. 90 might be reached. We consider our motion to dismiss so well founded, and the suggested lack of jurisdiction of the cross-appeal for want of parties so clear, that we shall not in this brief take the time of the court to discuss the merits of the errors assigned by the appellant in No. 245 further than they may be incidentally involved in the discussion of our own grounds of appeal.

The complaint, as the statement of plaintiff's cause of action is called in all classes of actions under the present Code of Civil Procedure of Porto Rico, was described by its heading as one for the annulment of certain contracts and the recovery of certain real estate, and the rights of plaintiffs were alleged to arise from the provisions of section 811 of the old Civil Code of Porto Rico, re-enacted as section 799 of the Revised Code, whereby something in the nature of a vested remainder was reserved for the benefit of the collateral relatives in property, which, having once been inherited by a descendant as heir of his ancestor, came afterwards to be inherited from said descendant by a surviving ancestor as heir of such descendant.

More specifically, the complaint alleged that on the 6th day of March, 1886, Manuel Garcia Maytin, a resident of Bayamon, Porto Rico, died there without having made any valid last will, leaving surviving him a widow, Beatrix Alos de los Angeles, and a daughter, Beatrix Garcia, who was de-

clared sole heir of her said father by an order of court dated June 6, 1886; that said daughter on March 2, 1891, married one Ruiz Ibarra under a marriage settlement whereby all the property she had inherited was set apart to her as paraphernal property, and died on the 28th day of September of the same year, leaving, of course, no issue; and that her said mother, Beatrix Alos de los Angeles, was declared her heir *ab intestato* by an order of court dated July 1, 1892, but as such proceeding was *ex parte* its effect was without prejudice to the rights of other parties and expressly reserved the usufructuary rights of her surviving husband.

The complaint further alleged that after said daughter, Beatrix García, had been declared sole heir of her father, and before her marriage or arrival at full age, to wit, about the end of the year 1886, the mother began the necessary judicial testamentary proceedings for the settlement of the estate of her deceased husband, Manuel García Maytín, and, in the course of those proceedings, attempted to have made and approved an alleged liquidation and partition of the assets of his estate; that for said purpose she stated in her petition that she was interested in having said petition made on account of her share in the assets of the conjugal partnership, and prayed the appointment of a *curator ad litem* to represent her said minor daughter; that upon such representations a judicial liquidation and partition was ordered and such a *curator ad litem* appointed, as well as an auditor to take part in the same, and after said proceedings had been had, the liquidation and partition was made; that said widow asked for said partition and made herself a party thereto for the purpose of causing, as she succeeded in doing, the greater part of the assets of the estate to be adjudicated to herself for the payment of fictitious debts, although in the deed of partition itself she declared and admitted that there was no conjugal property, and that, in view of such admission, no partition was necessary or should have been made, but the whole estate should have been adjudicated and turned

over to the said heir, the daughter, and charged with the payment of such debts as might be judicially ascertained and ordered paid.

The complaint thereupon charges that the partition proceedings above described were void because not warranted by law under the facts as set forth in the deed of partition itself, and also that said partition was fraudulent, in that the indebtedness of the estate, for the payment of which property the estate was adjudicated and turned over to her, was fictitiously augmented, while the values of the different parcels of property composing the estate were fraudulently manipulated so as to unduly depreciate the valuation of those parcels turned over to her, which resulted in her receiving, under an adjudication for the purpose of paying the debts of the estate, property many times sufficient in value to pay the total of the legitimate debts, and also resulted in the heir and the remaindermen (to call them such) being thus fraudulently deprived thereof; a description of the different parcels and kinds of property constituting the estate so partitioned being set forth in the complaint.

The complaint further alleged that the mother, Beatrix Alos de los Angeles, at once went into possession of that part of the estate adjudicated to her for the payment of debts, and proceeded to treat it and dispose of it as her own, although the parts disposed of were not so disposed of for said purpose of paying debts; that, upon the death of her said daughter, her mother also took possession of and treated absolutely as her own that portion of the estate which had remained to the daughter during her life, and so continued to hold and dispose of it up to the time of her own death, which occurred on September 18, 1904, and that said mother, Beatrix Alos de los Angeles, had attempted to transfer and dispose of all of said property by her last will and testament absolutely, in favor of her own heirs and ignoring the rights of plaintiffs under the statute aforesaid, although the title to said property, as well as the possession thereof after the death of the

mother aforesaid, belonged to plaintiffs as brothers and sisters of said Manuel Garcia Maytin.

The complaint further set up that the entries in the registry of property, touching the property in question, showed the illegality of the title of said mother and widow, Beatrix Alos de los Angeles. It named as defendants the testamentary heirs and executor of the last named and those persons to whom portions of such property had been conveyed, and it concluded by praying relief in the following respects: First, that the last will and testament of said Beatrix Alos de los Angeles be declared null in so far as the attempted disposition of the reserved property belonging to plaintiffs was concerned; second, that the property descending from said Manuel Garcia Maytin to his daughter, and from her ascending *ab intestato* to her mother, be declared to be within the terms of the statute above referred to and to have been held by the mother as reserved property, and upon her death to have become, identically as they appeared in said partition proceedings, the property of the plaintiffs herein as the nearest collateral relatives of said Manuel Garcia Maytin, the source whence the same had been derived; third, that the partition proceedings by which the inheritance from said Manuel had been divided be declared null and void, especially in regard to the appraisement of the properties and the schedule of liabilities, except as to the interest of certain censos, which were admitted to have existed and not to have been redeemed, and the expenses of the funeral and of the testamentary proceedings; fourth, that, consequently, it be declared that all the property described in the complaint as having been left by said Manuel at his death had constituted the inheritance of his daughter, Beatrix Garcia y Alos, the full ownership of which had, before the time of the filing of the suit, passed to the plaintiffs under the statute aforesaid; fifth, that the alienations made by the mother of parts of said real estate should be declared null and void, or at least of no further effect after

the death of the mother; sixth, that the full ownership of said alienated property be decreed to said plaintiffs; seventh, that the testamentary heirs or devisees of said mother, Beatrix Alos de los Angeles, be required to restore and deliver to said plaintiffs all the personal property which had belonged to the estate of said Manuel, or the value of their inheritance in case it could not be restored in kind, under the same conditions as apply to the obligations of usufructuaries; and, eighth, that the proceeds of all the assets of said estate of Manuel, collected or to be collected at the time of the death of said Beatrix Alos de los Angeles, and all the appurtenances thereof, belonged to the plaintiffs.

The foregoing complaint seems to have been originally presented in the trial court at San Juan in November, 1904, but no further steps were taken until the same was amended and copies of such amended complaint served on the attorneys of the several defendants on April 28, 1905 (Record, pages 1-9).

Answers to this complaint were filed by the following defendants, alleging the defenses respectively outlined:

1. By Ramón Valdés as the purchaser of a farm called "El Pastillo" from said Beatrix Alos.

He alleged that his purchase was made by deed dated May 5, 1898, which was afterwards duly recorded; that the registry showed her title to have been acquired by adjudication for the payment of debts of the estate of her husband, and not by inheritance from her daughter; that he, said defendant, had nothing to do with the partition proceedings; that the causes of nullity of those proceedings now alleged did not appear in the registry, but he believed and alleged, nevertheless, that said proceedings had been valid and regular; that the suit was barred by prescription, as nearly fourteen years had elapsed since the death of the daughter, Beatrix Garcia, and that plaintiffs had not asked at any time after her death for the constitution of the legal mortgage referred to in articles 168 and 189 of the Mortgage

Law, and had neglected to make it appear in the registry that the farm he purchased was reserved property. This defendant closed his answer by denying the various causes of nullity of the partition alleged in the complaint and, generally, all the allegations thereof (pages 10-12).

2. By Beatrix de los Angeles, widow of Francisco Alos, mother and one of the testamentary heirs of Beatrix Alos, and the party who is now appellant in No. 245.

She alleged that Beatrix Alos, widow of Manuel Garcia Maytin, executed her last will in the year 1904, by which she made the following bequests: A legacy of \$1,000 to José Quijano Leizaur and one of \$300 to Guadalupe Garcia y Quiara; that she devised the half of her estate, after the above deductions, to her nephews, Luis and Manuel Quixano y Alos, and her niece, Maria Quixano y Alos, in certain proportions, and named her mother, this defendant, as heir to the other half, this last being only that part which the law gave her as her legal portion, but that, as no specific property was mentioned in said will, no property belonging to plaintiffs could have been disposed of thereby. She admitted that Beatrix Alos had been declared the sole heir of her daughter, without prejudice to third parties or to the legal portion belonging to the surviving spouse according to article 836 of the civil code.

She further alleged that the inheritance of Beatrix Garcia from her father was certain specified property valued at 13,018.22 pesos, Mexican currency, as shown by the partition proceedings before referred to, which were had when the daughter was 17 years old in 1886; that said partition was not opposed by said daughter after her marriage, nor by the mother, nor even by the plaintiffs, although nearly eighteen years had since elapsed; that after being designated as sole heir of her daughter the mother bought the rights of the surviving spouse in the estate for the sum of 8,000 pesos, which was claimed to show that the estate inherited by

ernment at the times and in the order required to carry on its work properly, was an entire stranger to all of these transactions with respect to the manufacture of armor. It is pitiful, indeed, for this government to seek to evade responsibility for breach of its absolute and unconditional obligation by a contention so entirely devoid of merit in law or in fact.

Consider the contract in suit from the standpoint of the shipbuilder's obligations. The shipbuilder was not a manufacturer of beams, girders, hullplates and other structural material required for use in the construction of the vessel, yet the company assumed the obligation to furnish these things and was bound by it. Suppose for any reason it had not been able to procure such materials from third parties, or, like the Government, had not been willing to pay the prices for which such things were procurable. Can it be supposed, for a moment, that that would have been accepted by the Navy Department, or by any court as a valid excuse for the shipbuilder's failure to furnish the material in due time. The contract (Paragraph Ninth, p. 8) in enumerating the grounds on which the shipbuilder might be excused from penalty for failure to finish the vessel within the building period mentioned, circumstances beyond the builder's control, but said: "*but such circumstances shall not be deemed to include delays in obtaining materials.*"

II.

The contingencies mentioned in the latter part of Paragraph Third of the contract with respect to non-delivery of armor by the Government did not arise and the several provisions with respect to them did not affect the rights or obligations of the parties now in controversy. Even if these contingencies had arisen the Cramp Company would be entitled to damages caused by the Government's breach of its covenant to deliver the armor.

In their brief counsel for the Government say (pp. 21, 23, 25) that on February 15, 1898, when the construction of the vessel had arrived at a stage where the shipbuilders needed certain armor plate in order to carry on their work properly, the company had the option between two courses: (1) to complete the vessel without her armor, deliver her to the Government in that condition and receive the contract price less the cost of installing the armor; or (2) to await deliveries of armor and complete the vessel, armor and all, but by so doing, waive the company's right to damages for the Government's breach of covenant in failing to deliver the armor when needed. That contention is absolutely without foundation. The contract would not justify it, no matter what the circumstances had been, and the facts were such that the provisions of the contract relied upon, had no effect upon the rights or obligations of the parties. Counsel for the Government base their contention upon part of Paragraph Third of the contract (pp. 6-7) following the recital of the Government's obligation to deliver the vessel's armor to the shipbuilders at the times and in the order required to enable them to carry on their work properly. That is as follows:

"It is expressly understood, covenanted and agreed that if, upon the completion of the vessel, except the fitting, fixing, placing and securing of the armor for her side and diagonal belts, turrets, barbettes, casemates, and conning towers, the party of the second part (United States) shall not have commenced the delivery of such armor to the party of the first part, then and in such case the vessel shall be subjected to the trial provided for in the tenth clause of this contract, and if, at and upon such trial, all the conditions and requirements relating thereto, except as to the fitting, fixing, placing, and securing of the armor for the side and diagonal belts, turrets, barbettes, casemates, and conning

towers, shall be fulfilled the vessel shall be accepted as provided for in the eleventh clause of this contract; and if the party of the second part shall not have commenced the delivery of the armor for the side and diagonal belts, turrets, barbettes, casemates, or conning towers, when the vessel is ready for her final trial, or within five months after either a preliminary or a conditional acceptance of the vessel, said vessel shall be finally accepted, subject to the conditions and requirements of this contract, and the cost of fitting, fixing, placing, and securing the armor for the side and diagonal belts, turrets, barbettes, casemates, and conning towers shall be ascertained, estimated and determined by a board of naval officers appointed by the Secretary of the Navy; the party of the first part shall be bound by the determination of said board, and such cost shall be deducted from the price of the vessel in the final settlement under this contract; but if the party of the second part shall commence and continue with reasonable diligence the delivery of the armor for the side or diagonal belts, turrets, barbettes, casemates, or conning towers of the vessel prior to her final trial, or within five months after either a preliminary or a conditional acceptance of the vessel, the party of the first part shall fit, fix, place, and secure all the armor to the vessel in accordance with the requirements of this contract and the drawings, plans and specifications hereto annexed."

THIRD

The preliminary trial referred to in Paragraph Ninth (*supra*) is elaborately described in paragraph "Tenth." This set forth a number of requirements that the vessel must fulfill, before delivery and preliminary acceptance, including a trial at sea:

"She shall be subjected to a trial trip in the open sea, under conditions prescribed or approved by the Secretary of the Navy, to test the hull and fittings, machinery, including engines, boilers, and appurtenances, the equipment, the installation of the ordnance and

*ordnance outfit, and the speed of the vessel, and that she shall be accepted only on fulfilment of, and subject to the conditions and agreements hereinafter set forth * * **"

The mere reading of these provisions is sufficient to show that the shipbuilder was given no option and required to make no election as to its conduct in the event of default by the Government in furnishing the armor. If the shipbuilder's obligations or rights can be said to have been affected in any way, it was by depriving it of the right that a contractor would ordinarily have in the event of breach by the other party, to terminate the contract and sue for damages sustained and profits prevented. The requirement was that notwithstanding the Government's default and irrespective of the shipbuilder's right to damages, caused by it, the shipbuilder should proceed with the work as far as it could do so without armor. But up to the point of final acceptance it was optional with the Government, at any time, to *commence deliveries of any part of the armor* and restore the contractor's obligation save its right to damage and to the situation in which it would have been if the Government had not made default. It appears from the findings, particularly the reports of the Superintending Contractor, who acted as the Government's representative, that the shipbuilders did at all times continue their work as best they could. They had no right under the contract to suspend work on the vessel when the Government's default began and no such suspension occurred.

If the intent of Paragraph Third (*supra*) had been that, under no circumstances, should the Government become liable for pecuniary damages for default in furnishing armor—*why did not the Government come out honestly and say so in unmistakable terms?* If the Government's covenant to contribute armor was not intended as a material

consideration moving from the Government, or an obligation of the Government which it was bound to discharge, *why was it put in the contract at all?* If the Government merely intended to say that it would furnish *some armor if it pleased, when it pleased*, why the elaborate requirement stating what armor was to be furnished and that deliveries were to be made in such a way that the shipbuilder's work should not be hindered?

It was the Government rather than the shipbuilder that had the option of requiring the construction of the vessel with her armor or without it. There is not a thing in the record tending to show that the Government ever elected to have the vessel constructed without armor. The findings show the contrary. Through his inspectors the Secretary knew that the work was proceeding and he never attempted to suspend it or modify it. It rested with the Secretary to prescribe the conditions for the preliminary trial as was required by the Tenth Paragraph. Without such trial the vessel could not be tendered for preliminary acceptance. There is nothing in the record to show that the Secretary ever formulated such conditions or communicated them to the Cramp Company, and he never did so. In the court below there was evidence to show that the company asked him to permit the completion and the trial of the vessel without armor and that he refused to allow it. That evidence was not contradicted in any way, but the Court of Claims seems to have ignored it. Doubtless the court did not anticipate that the Government would make the contention now under discussion.

The contingencies mentioned in the latter part of Paragraph Third (*supra*) did not arise. The Government elected to and did begin delivering armor for the vessel before she was ready for preliminary acceptance, or could have been made so. These facts are established so clearly by the

findings that the Government's contention, based on a contrary hypothesis, is not even plausible. This is the chronological history of the "Alabama's" construction:

1. On September 24, 1896, the contract was executed. (*Finding II*, p. 21).

2. On February 15, 1898, sixteen and one-half months after the date of the contract, her construction had advanced to a point where her builders needed armor to continue their work upon her properly. (*Finding V*, p. 21).

3. On May 18, 1898, the vessel then being 55 per cent completed, was launched. (*Finding VI*, p. 22).

4. On June 9, 1898, twenty and one-half months after the date of the contract, the United States placed an order for the manufacture of her armor. (*Finding VIII*, p. 22).

5. On June 30, 1898, a little over twenty-one months after the date of the contract, the Superintending Constructor, representing the Government, estimated that the vessel was 60 per cent completed. (*Finding VII*, p. 22).

6. On December 22, 1898, the Government "commenced the delivery" of armor for the vessel, and thereafter continued to deliver it in instalments up to June 7, 1900, forty-four and one-half months after the date of the contract, and eight and one-half months after the end of the vessel's building period stipulated in the contract. (*Findings V and IX*, pp. 21, 22).

It is obvious that, in the period of less than six months, which intervened between June 30, 1898, when the vessel was 60 per cent completed, and the first delivery of armor, December 22, 1898, it was impossible that she should be completed without armor, tested, tried, delivered to the Government and preliminarily accepted, and then, after the lapse of about five months subsequent to preliminary acceptance, have been finally accepted.

Notwithstanding its obligation to deliver the armor when needed to enable the builder to carry on its work properly,

the Government reserved the privilege of having the vessel constructed, armor and all, provided it commenced deliveries before final acceptance (*Contract, Paragraph Third*). Therefore, it is absurd to say that the contingency mentioned in the latter portion of that paragraph ever arose, or, in any degree, modified the rights and obligations of the parties save that the shipbuilder had to continue its work upon the vessel.

JAMES H. HAYDEN,
ROBERT C. HAYDEN,
Of Counsel for Appellant.

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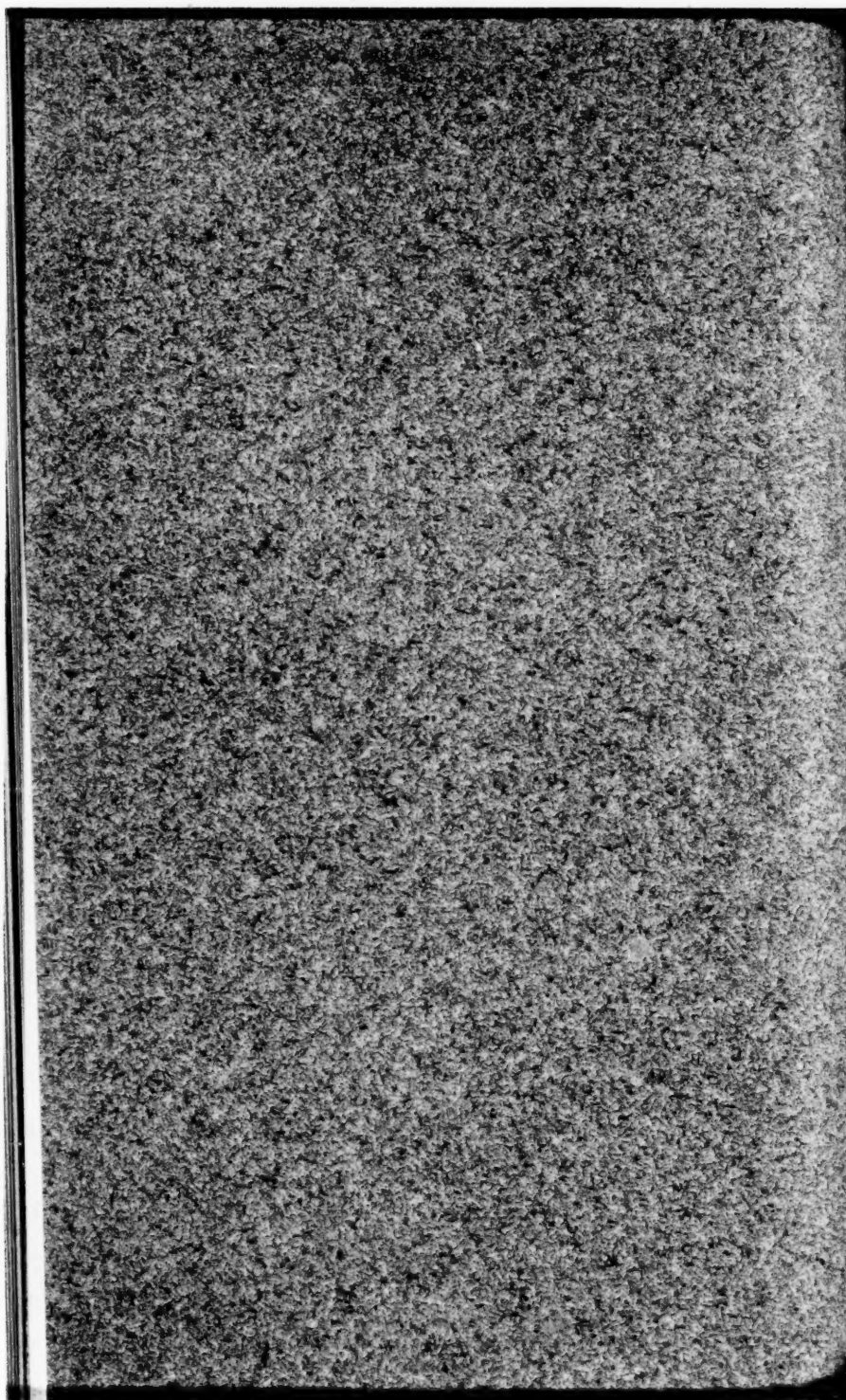
In the Supreme Court of the United States.

THE WILLIAM CRUMP AND SONS SHIP AND ENGINE
BUILDING COMPANY, APPELLANT,

THE UNITED STATES,

APPEE, FROM THE COURT OF CLAIMS.

FOR THE UNITED STATES.



In the Supreme Court of the United States.

THE WILLIAM CRAMP AND SONS SHIP AND Engine Building Company, appellant, v. THE UNITED STATES.	}	No. 92.
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APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

Appellant, a corporation organized under the laws of the State of Pennsylvania, brought suit in the Court of Claims for the sum of \$78,584, alleging failures on the part of the United States to comply with its contract in the construction of a battle ship referred to as No. 8 and now known as the *Alabama*.

Among other things, the contract contained the following provisions: The United States was to furnish certain armor and armor bolts to be used in the construction of the vessel, including such as might be "required in the construction of the side and diagonal belts, turrets, barbettes, casemates, conning

towers, ammunition tubes, and protection for the guns and loading positions * * * and deliver said armor and armor bolts at the shipyard of the party of the first part within the times and in the order to carry on the work properly." (Rec., p. 6.) The contractor was to put the armor in place on the ship, build and equip the vessel in all other respects, and complete the same in three years from the date of the contract. In case of failure to comply with the contract, provision was made for a deduction of \$75 per day for the first three months of such delay, \$150 per day for the second three months' delay, and \$300 per day for all delays beyond the period of three years and six months from the date of the contract. (Rec., p. 9.)

It was also provided that "all delays which the Secretary of the Navy shall find to be properly attributable to the party of the second part, or to its officers, or agents, or any or either of them, to have been delays operating upon the completion of the vessel within the time specified therefor by the contract, shall entitle the party of the first part to a corresponding extension of the period prescribed for the completion of the vessel." (Rec., p. 9.)

"If upon the completion of the vessel, excepting the fitting, fixing, placing, and securing of the armor for her side and diagonal belts, turrets, barbettes, casemates, and conning towers, the party of the second part shall not have commenced the delivery of such armor to the party of the first part, then and in such case the vessel shall be subjected to the trial

provided for in the tenth clause of the contract," and if upon such trial all the conditions of the contract, except as to such armor, should be fulfilled, the vessel should be preliminarily accepted; and if within five months after such preliminary acceptance the United States should not have commenced the delivery of such armor, the vessel should be finally accepted and the cost of putting the armor in place left to the determination of a board appointed for this purpose, and the cost of the same as ascertained by said board should be deducted from the contract price. But if before the final trial, or within five months after the preliminary acceptance, the United States should "commence and continue with reasonable diligence the delivery of the armor," the contractor was to put it in place in accordance with the contract. (Rec., pp. 5-7.)

The appellant failed and neglected to avail itself of the provision of the third paragraph of the contract providing for the preparation and completion of the vessel for its trial without the fitting, fixing, placing, and securing of the armor, and which it might have done on the default of the Government to deliver the same "within the times and in the order to carry on the work properly."

Payment was to be made in thirty equal instalments as the work progressed, with a reservation of 10 per cent from each instalment. The last three instalments, as well as the reservations provided for from the first twenty-seven, were not to be paid until the preliminary acceptance of the vessel; and for the

further protection of the United States and to cover possible defects a special reserve of \$60,000 was to be retained by the United States until the final acceptance of the vessel. (Rec., p. 14.)

Upon the full performance of its part of the contract the appellant was to receive the "special reserve, or surplus, if any, of said reserve fund * * * on the execution of a final release to the party of the second part in such form as shall be approved by the Secretary of the Navy, of all claims of any kind or description under or by virtue of this contract." (Rec., p. 14.)

The United States, having no armor plant of its own, was obliged to obtain, and did obtain, the armor from other contractors who failed to complete the manufacture of the same in time for delivery to the appellant "within the times and in order required to carry on the work properly," and in consequence of this the completion of the vessel was delayed. By reason of the failure of the United States to furnish the armor for the said ship when the same was required by the contractor the completion of the vessel was delayed for a period of three hundred and eighty-seven days (Finding XIII, Rec. p. 23) beyond the original contract period, and was not delivered to the United States until October 6, 1900.

Upon the request of the contractor made upon the Secretary of the Navy appellant was first notified on October 9, 1899, that "the provisions of the ninth clause of the contract for the construction of

said vessel, relating to deductions from the contract price for delays, will be suspended for a reasonable time, pending the final delivery of the armor, and the question of the extension of time will be determined when the armor is all delivered," and later, on October 31, 1900, the contract time for the completion of the ship was duly extended until the date of its preliminary acceptance, or October 22, 1900.

In consequence of this extension no deduction on account of delay was made from the contract price of the vessel, which was paid to the appellant in full. (Fourteenth finding Court of Claims, Rec. pp. 23 and 24.)

After the completion and delivery of the ship, and on February 9, 1901, the contractor sent a communication to the Secretary of the Navy, in which claim was made for the damage alleged to have been sustained in consequence of the failures and delays of the United States. To this communication, on February 13, 1901, the Secretary of the Navy made reply by letter, in which statement was made to the effect that "after a careful consideration of the subject, the claim, being for unliquidated damages, is of a kind the department has no authority under the law to entertain." (Rec. p. 24.)

On April 15, 1901, appellant, through its counsel, suggested a form of proviso to accompany the final release.

On April 17, 1901, the Secretary of the Navy made reply, in which the proviso suggested by the

appellant was not accepted, but in its place the following was substituted:

Provided, that this release shall not be taken to include claims arising under the said contract other than those which the Secretary of the Navy had jurisdiction to entertain. (Rec., p. 26.)

This was subsequently embodied in the final release which was given which was identical in essential particulars with that given in the case of the *Indiana*, and which was passed on by this court (206 U. S., 118), save as to the proviso.

The court below held that "by reason of the said several failures and delays of the United States with respect to the furnishing of the armor for the said battle ship, and the delay in her completion and difficulties experienced in her construction consequent thereon, the claimant was put to extra expense in the performance of the contract in suit and sustained damage to the amount of \$49,792.66." This is more fully set forth in the itemized schedule which is embodied in the findings. (Rec., p. 30.)

Upon the foregoing facts the court dismissed the petition and entered judgment in favor of the Government on the authority of the opinion rendered by this court in the case of *United States v. William Cramp & Sons Ship & Engine Building Company* (206 U. S., 118), which was a claim growing out of the construction of the battle ship *Indiana*. The battle ship *Indiana* was constructed by appellant herein under a contract practically identical in terms

with that in the case at bar, and a final release was given which differs from the final release in the present case in but one respect, namely, the proviso italicized in the *Alabama* release, reading as follows:

Provided, That this release shall not be taken to include claims arising under the said contract other than those which the Secretary of the Navy had jurisdiction to entertain.

For the convenience of the court copies of the final releases in the two cases are here set forth.

The Indiana release.

Whereas by the eleventh clause of the contract dated November 19, 1890, by and between the William Cramp and Sons Ship and Engine Building Company, a corporation created under the laws of the State of Pennsylvania, and doing business at Philadelphia, in said State, represented by the president of said company, party of the first part, and the United States, represented by the Secretary of the Navy, party of the second part, for the construction of a seagoing coast-line battle ship of about ten thousand tons displacement, which, for the purpose of said contract, is designated and known as "Coast-line battle ship No. 1," it is agreed that a special reserve of sixty thousand dollars (\$60,000) shall be held until the vessel shall have been finally tried; provided that such final trial shall take place within five months from and after the date of the preliminary or the conditional acceptance of the vessel; and

Whereas by the sixth paragraph of the nineteenth clause of said contract it is further provided that when all the conditions, covenants, and

The Alabama release.

Whereas by the eleventh clause of the contract dated September 24, 1890, by and between the William Cramp and Sons Ship and Engine Building Company, party of the first part, and the United States, party of the second part, for the construction of battle ship No. 8, the *Alabama*, it is agreed that a special reserve of sixty thousand (\$60,000) dollars shall be held until the vessel shall have been finally tried; provided that such final trial shall take place within five months from and after the date of the preliminary acceptance of the vessel; and

Whereas by the seventh paragraph of the nineteenth clause of said contract it is further provided that when all the conditions, covenants, and provisions of said contract shall have been performed and fulfilled by and on the part of the party of the first part said party of the first part shall be entitled, within ten days after the filing and acceptance of its claim, to receive the said special reserve, or the surplus, if any, of the said reserve fund, or so much of either as the said party of the first part may be

provisions of said contract shall have been performed and fulfilled by and on the part of the party of the first part, said party of the first part shall be entitled, within ten days after the filing and acceptance of its claim, to receive the said special reserve or so much thereof as it may be entitled to on the execution of a final release to the United States in such form as shall be approved by the Secretary of the Navy of all claims of any kind or description under or by virtue of said contract; and

Whereas the final trial of said vessel was completed on the eleventh day of April, 1896; and

Whereas all the conditions, covenants, and provisions of said contract have been performed and fulfilled by and on the part of the party of the first part;

Now, therefore, in consideration of the premises, the sum of forty-one thousand one hundred and thirty-two dollars and eighty-six cents (\$41,132.86), the balance of the aforesaid special reserve (\$60,000), to which the party of the first part is entitled, being to me in hand paid by the United States, represented by the Secretary of the Navy, the receipt whereof is hereby acknowledged, The William Cramp and Sons Ship and Engine Building Company, represented by me, Charles H. Cramp, president of said corporation, does hereby for itself and its successors and assigns, and its legal representative, remise, release, and forever discharge the United States of and from all and all manner of debts, dues, sum and sums of money, accounts, reckonings, claims, and demands whatsoever, in law or in equity, for or by reason of, or on account of, the construction of said vessel under the contract aforesaid,

entitled to, on the execution of a final release to the party of the second part, in such form as shall be approved by the Secretary of the Navy, of all claims of any kind or description under and by virtue of said contract; and

Whereas said vessel was preliminarily accepted on the 22d day of October, 1900, and her final trial completed March 11, 1901; and

Whereas all the conditions, covenants, and provisions of said contract have been performed and fulfilled by and on the part of the party of the first part, excepting certain minor defects, deficiencies, and items of uncompleted work, to cover which the sum of twenty thousand dollars is, according to an understanding between the respective parties to said contract, and as stated in the letter dated April 9, 1901 (No. 2919-01), of the Secretary of the Navy to the parties of the first part, to be withheld by the party of the second part until the completion of the vessel in said respects; and

Whereas owing to the inexpediency at this time of keeping the *Alabama* at a navy-yard long enough for the doing of the work in question, the party of the second part has consented to pay to the parties of the first part all balances due under said contract, excepting the said special reservation of twenty thousand dollars;

Now, therefore, in consideration of the premises, the sum of forty thousand dollars (\$40,000), the amount of the aforesaid special reserve, less the above-mentioned reservation of twenty thousand dollars (\$20,000), being to me in hand paid by the United States, represented by the Secretary of the Navy, the receipt whereof is hereby acknowl-

In witness whereof I have hereunto set my hand and affixed the seal of The William Cramp and Sons Ship and Engine Building Company this eighteenth day of May, A. D. 1896.

[SEAL] CHAS. H. CRAMP,
President.

Attest:
JOHN DOUGHERTY,
Secretary.

edged, the William Cramp and Sons Ship and Engine Building Company, represented by me, Charles H. Cramp, president of said company, does hereby, for itself and its successors and assigns, and its legal representatives, remise, release, and forever discharge the United States of and from all and all manner of debts, dues, sum and sums of money, accounts, reckonings, claims, and demands whatsoever in law and in equity, for or by reason of or on account of the construction of said vessel under the contract aforesaid, excepting the sum of twenty thousand dollars, withheld by the Secretary of the Navy as above set forth:

Provided, That this release shall not be taken to include claims arising under the said contract other than those which the Secretary of the Navy had jurisdiction to entertain.

In witness whereof the William Cramp and Sons Ship and Engine Building Company has caused its corporate name to be hereunto subscribed and its corporate seal to be affixed this nineteenth day of April, 1901, by Charles H. Cramp, its president

[Seal of the William Cramp and Sons Ship and Engine Building Co.]

THE WILLIAM CRAMP AND SONS
SHIP AND ENGINE BUILDING COM-
PANY.

By CHAS. H. CRAMP,
President.

Attest
CHAS. T. TAYLOR,
Secretary.

ARGUMENT.

The proviso not sufficient to confer upon appellant right of recovery.

The issue here is whether the proviso in the release saves the contractor from the final and complete surrender of his right of recovery on the claims set out in the petition.

The sixth clause of the nineteenth paragraph of the contract for the battle ship *Indiana*, and the seventh clause of the nineteenth paragraph of the contract in the case at bar are identical in language and are as follows:

When all the conditions, covenants, and provisions of this contract shall have been performed and fulfilled upon the part of the party of the first part, said party of the first part shall be entitled, within ten days after the filing and acceptance of its claim, to receive said "special reserve," or the surplus, if any, of the said "reserve fund," or so much of either as the said party of the first part may be entitled to, on the execution of a final release to the party of the second part, in such form as shall be approved by the Secretary of the Navy, of all claims of any kind or description under and by virtue of this contract.

In construing the final release in the *Indiana* case in connection with the foregoing clause of the contract, Mr. Justice Brewer, speaking for the court, said:

To rightly understand the scope of this release we must consider the conditions of the

contract, and especially the clause in it which calls for a release. The contract was a large one, the price to be paid for the work and material being over \$3,000,000, and the contract was evidently designed to cover all contingencies. Provision was made for changes in the specifications, for penalties on account of delays of the contractor, deductions in price on certain conditions, approval of the work by the Secretary of the Navy, forfeiture of the contract, with authority to the Secretary to complete the vessel. The last paragraph contains the stipulations as to the amounts and times of payment with authority for increase of the gross amount upon certain conditions. The sixth clause of this paragraph makes special provision for the last payment, to be made "when all the conditions, covenants, and provisions of said contract shall have been performed and fulfilled by and on the part of of the party of the first part," and "on the execution of a final release to the United States, in such form as shall be approved by the Secretary of the Navy, of all claims of any kind or description under or by virtue of said contract." Evidently the parties contemplated and specially provided by this stipulation that the whole matter of the contract should be ended at the time of the final release and the last payment. That which was to be released was "all claims of any kind or description under or by virtue of said contract." Manifestly included within this was every claim arising not merely from a change in the specifications, but also growing out of delay

caused by the Government. The language is not alone "claims under," but "claims by virtue" of the contract—"claims of any kind or description." All the claims for which allowances were made in the judgment of the Court of Claims come within one or the other of these clauses. It may be that, strictly speaking, they were not claims under the contract, but they were clearly claims by virtue of the contract. Without it no such claims could have arisen. Now, it having been provided in advance that the contract should be closed by the execution of a release of this scope it can not be that the company, when it signed the release, understood that some other or lesser release was contemplated. It must have understood that it was the release required by the contract—a release intended to be of all claims of any kind or description under or by virtue of the contract—and that the form of words which the Secretary had approved was used to express that purpose. With that release stipulated for in the contract the company signed the instrument of May 18, 1896, which in terms purported to "remit, release, and forever discharge the United States of and from all and all manner of debts, dues, sum and sums of money, accounts, reckonings, claims, and demands whatsoever, in law or in equity, for or by reason of or on account of the construction of said vessel under the contract aforesaid." Now, whatever limitation may be placed upon the words "for" or "on account of" the construction the provision for the release of all claims and demands

whatsoever, "by reason of the construction of the vessel under the contract aforesaid," is a recognition of the contract, and includes claims which arise by reason of the construction of the vessel under it. "By reason of" may well be considered as equivalent to "by virtue of." It is only by reason of the performance of the contract in the construction of the vessel that these claims arise. But for the contract, and the construction of the vessel under it, there would be no such claims. No payment of extra moneys is necessary to sustain this release. It is under seal, and the contract is itself full consideration. As of significance it must be borne in mind that the release referred specifically to the sixth paragraph of the nineteenth clause of the contract, which provided for the character of the release. Indeed, the general language of the release itself and the number of words of description in it show that it was the intent of the Secretary of the Navy to have a final closing of all matters arising under or by virtue of the contract.

Stipulations of this kind are not to be shorn of their efficiency by any narrow, technical, and close construction. The general language, "all and all manner of debts," etc., indicates a purpose to make an ending of every matter arising under or by virtue of the contract. If parties intend to leave some things open and unsettled, their intent so to do should be made manifest. Here was a contract involving \$3,000,000, and after the work was done, the vessel delivered and accepted, and this release

entered, claims are presented amounting to over \$500,000. Surely the parties never intended to leave such a bulk of unsettled matters.

Applying the foregoing to the case now under consideration, Mr. Justice Peelle, speaking for the court below, said:

That language evidently has reference to the contract and its requirements, and therefore when the contract in terms provides that the reserve or final payment will be made "when all the conditions, covenants, and provisions of said contract shall have been performed and fulfilled by and on the part of the party of the first part," the claimant was, upon such payment, obligated to sign the release provided by the terms of the contract releasing the Government from "all claims of any kind or description under or by virtue of said contract." And, since the court in the case cited holds that the release of all claims growing out of the construction of the vessel—without which such claims would not have arisen—was a recognition of the contract and settled, as the court says, "all disputes between the parties as to claims sued upon"—including unliquidated claims—the Secretary of the Navy in respect thereto not only had the right to accept such release in the interest of the Government, but under the contract it was his duty to do so.

Counsel for appellant, referring to section 7, paragraph 19, of the contract, say that the same was not a present release (p. 15), but at the utmost an agreement to release contingent upon the performance by

the Government of the considerations specified, and follow this by the statement that "performance by the Government of its covenant to supply armor failing, the builders' agreement to release went with it."

Section 7 contains no reference, either direct or indirect, to "performance by the Government of its covenants to supply armor," nor does it in any manner suggest this as a consideration for the release which was to be given by the contractor. It states specifically (Rec., p. 14), "when all the conditions, covenants, and provisions of this contract shall have been performed and fulfilled, by and on the part of the party of the first part" (Cramp Company), "said party of the first part shall be entitled * * * to receive said special reserve * * * on the execution of a release," etc.

The failure of the delivery of the armor by the Government within the times and in the order required to carry on the work properly had been fully provided for in the contract in other ways, and had nothing whatever to do either as consideration or otherwise with the release which was required by the contract.

Appellant contends in substance that the contract did not obligate it to relinquish the claim in suit, or any other claims that might accrue to it for breach of the contract by the United States; that the contract itself was not a release of such claims; and that the acceptance by the appellant of the last payment did not create a bar to the appellant's right of action for

the breach committed by the United States. (Appellant's brief, p. 12.)

The so-called breach on the part of the United States, which consisted of its failure to deliver the armor within the times and in the order required to carry on the work properly, was foreseen by the parties and fully provided for in the contract. (See paragraph 3 of the contract, Rec., pp. 5 to 7; see also ninth paragraph of contract, Rec., pp. 8 and 9.)

1. While the contract itself may not be a release of such claims as those in suit, it nevertheless provided for a release of all claims growing out of the contract.

The case of *Texas, etc., R. Co. v. Dashielle* (198 U. S., 521), cited in appellant's brief (pp. 17 and 18), is not apposite. The release given in the case cited had not been previously provided for and the character of the same determined upon between the parties. Again, a different rule of damages and of the interpretation to be given to releases obtains in personal injury cases. Moreover, particular injuries being described in and covered by the release, the court held in that case that the release given was limited to the injuries specified alone. This was not the case with the release in the suit at bar.

Appellant contends that—

Apart from the plain and explicit language of the release it was clearly understood by the parties that the claim in suit was left open and unsettled, to be adjudicated by the tribunal having exclusive jurisdiction of claims for un-

liquidated damages. That was the situation of affairs when the first payment of \$40,000 was made from the special reserve. When the \$20,000 matter was adjusted some months later this suit had been brought and no release whatever beyond a voucher for the payment was asked for or given. (Appellant's brief, p. 20.)

It is sufficient answer to this to inquire, Why should a second release be required of the appellant when the Government was absolved by virtue of the release which had already been given?

The further point is made that certain items of uncompleted work remained at the time the release was given to cover the cost of which the Secretary withheld \$20,000 pending completion by the Government at the builders' cost, and statement is made (appellant's brief, p. 21) that if he had authority to make that exception of a matter which he was authorized to settle, he had also authority to make the other exception with respect to claims that he could not entertain and was obliged by law to leave unsettled if the contractor refused to relinquish them.

The Secretary required the final release before he paid any part of the special reserve, which conclusively shows that he did not assume to exercise any discretionary powers except the withholding of the part of the money unearned by the appellant to make the Government safe. This was a question of pure official duty and involved no exercise of discretion whatsoever. During the progress of the work

certain things were left to the discretion of the Secretary of the Navy, but when it came to the matter of making the final payment, his discretionary powers had ceased, and nothing but a ministerial function remained.

The authorities cited to show the power of the Secretary of the Navy to direct the modification of a contract during the progress of the work have no possible bearing on the case at bar where the Secretary's discretionary powers had ceased and only a plain ministerial duty remained.

The case of *Weeks v. Rector et al. Trinity Church* (56 App. Div. N. Y., 195, pp. 22, 23) is not in point. The contract in the case cited provided for the exaction of a penalty in case of the contractor's default; and in the absence of express provision the contract by implication clearly provided for damages in case of the default of the other party. In the case at bar provision was made for the exigency of the default of the Government, and this having been done it is improper to read into the contract additional provisions not therein contained or implied. Moreover, in the case cited, there is nothing to show that the contract provided for the kind of a release which was to be given when final payment was to be made.

Appellant's counsel, in an effort to distinguish between the case of the *Indiana* and the one at bar, takes the position that the court in deciding the *Indiana* case made no mistake, because in that case the release was unconditional and given without pro-

test, whereas in the present case the appellant saved its right of protest by virtue of the proviso which was incorporated in the final release.

If the Secretary of the Navy was without jurisdiction to entertain or pass upon claims of the character in this suit, then the release which was given in the *Indiana* case was not sufficient to release the claims in that case. But if the Secretary did have jurisdiction to consider and entertain the claim in the *Indiana* case, he had jurisdiction to consider and settle the claims in the present suit. This court has practically said, however, that the Secretary of the Navy did have jurisdiction to entertain and settle the claims in the *Indiana* case, and a comparison of the claims in that case with the case in suit discloses the fact that they are identical in their nature. Therefore the proviso does not have the effect for which appellant contends. If the Secretary of the Navy had authority and jurisdiction in the one case, he had the same authority and jurisdiction in the other case, and this is the view held by the Court of Claims in its opinion in the case at bar. The Secretary was clothed with authority to close the contract in a prescribed manner. He could not make the final payment until a full and final release of all claims was given by the contractor, neither could he modify or change the form of release required by the contract, but this does not conflict with the exercise of his discretionary powers in respect to changes and modifications while the work was in progress.

Throughout the opinion of the court in the *Indiana* case reference is made to expressions in the contract as controlling rather than the language of the release itself, and the opinion is based upon the requirements of the contract rather than the language and terms used in the release. The effect of this decision is to hold that the claim in question was liquidated in advance and that when the release required by the contract was signed the whole matter was closed.

The proviso does not and can not change the situation or save any substantial rights to the appellant which would have otherwise been forfeited. It could not possibly add to the powers of the Secretary of the Navy, or subtract anything therefrom. It does not even pretend so to do. It simply says in substance, whatever authority inheres in the Secretary of the Navy, he exercises, and, *contra*, whatever authority the Secretary of the Navy does not possess in the premises, he does not assume to exercise. That is all. In other words, such claims as the Secretary of the Navy has jurisdiction to entertain, are covered by the release; while, on the other hand, such claims as the Secretary of the Navy has no jurisdiction to entertain, are not covered thereby. This is a fair analysis of the language of the proviso and interpretation of its meaning. This proviso might just as well have been omitted.

It neither adds to nor detracts from the release required by the contract nor from the release in the

form executed by appellant. The document releases all claims arising out of the contract, under the contract and by virtue of the contract. "Without it [the contract] no such claims could have arisen," and the proviso is just about as effective in saving any rights to this appellant as if it included therein the right to sue the United States for the damage done by the earthquake to the island of Sicily.

The release called for by the seventh paragraph of the nineteenth clause of the contract requires the releasing by the party of the second part, in such form as shall be approved by the Secretary of the Navy, "all claims of any kind or description under and by virtue of this contract." There was nothing left to the discretion of the Secretary beyond the mere form of the release. It was given on the fulfillment of certain stipulated conditions. Everything was to be considered liquidated, satisfied, and closed, and the execution of the release was necessary as a condition precedent to the final payment by the Government. Appellant was not obliged to sign the release; on the other hand, it might have refused so to do and instituted suit to recover not only the amount of the special reserve but all sums claimed to be due on account of the Government's defaults and delays. But having signed the release of every claim of whatever kind or character, growing out of the contract or by reason of the contract, it is now precluded from maintaining this action.

II.

Upon the failure of the Government to furnish the armor "within the times and in the order required to carry on the work properly," the contractor failed to complete and tender the vessel for trial without the armor, as provided for in the contract.

The contingency of the Government's failure to provide the armor within the times and in the order required to carry on the work properly was contemplated by the parties to the contract. Certain armor was to be provided by the contractor in the construction of the protective deck; but beyond this the Government was to furnish "all other armor, and the armor bolts, to be used in the construction of the vessel, including such as may be required in the construction of the side and diagonal belts, turrets, barbettes, casemates, conning towers," etc. (Rec., p. 6.) This was to be done, as previously stated, "within the times and in the order required to carry on the work properly." But in case of the Government's failure to do this, it was expressly provided that the contractor might complete the vessel without the armor, and said vessel might be subjected to the trial provided for in the tenth clause of the contract, and if at the time all the conditions and requirements relating thereto, except as to the fitting, fixing, placing, and securing of the armor, shall be fulfilled, the vessel to be accepted as provided for in the eleventh clause of the contract. (Rec., p. 6.) It was further provided that, if the Government shall not have commenced the delivery of the armor when

the vessel is ready for her trial, or within five months after either a preliminary or a conditional acceptance of the vessel, the vessel shall be finally accepted subject to the conditions and requirements of the contract, and the cost of fitting, fixing, placing, and securing the armor shall be ascertained, estimated, and determined by a board of naval officers appointed by the Secretary of the Navy, and such cost shall be deducted from the price of the vessel in the final settlement under the contract.

The necessity for the clause in the contract for the trial of the vessel without the armor was recognized by both parties to the agreement, and the failure of the Government to deliver the armor was anticipated. It was well understood that this provision was entirely for the contractor's benefit. It was not in the interest of the Government to accept the ship without her armor, but the reasonableness of the provision was apparent in view of the fact that the armor-plate industry had not far progressed in the way of development and there was great uncertainty attending its manufacture. The appellant and the naval officials had difficulty in procuring armor in connection with other contracts of like character, all of which emphasized the element of uncertainty as to the delivery of the armor which the Government was necessitated to secure from others by independent contract. This was well known to the contractor at the time the contract was signed. Therefore, the provision for the trial of the vessel without the armor was reasonable and entirely in the interest of appellant. Upon the

failure of the Government to furnish the armor when the ship had arrived at that degree of construction where the armor was required, it was the privilege and duty of appellant under the contract to tender the vessel for trial, and upon such tender the Government was required to subject the vessel to trial as provided in the tenth clause of the contract.

This appellant did not do. At least there is not the slightest claim anywhere in the record that such tender was made. Had it been made, the period of delay would not have arisen, and it would seem that appellant should not now be heard to claim for a delay which was occasioned by its own negligence, inability, or indifference to act.

III.

Extension of the contract period.

In the ninth clause of the contract (Rec., pp. 9 and 10) three classes of delay are recognized and provided for therein, with different consequences attaching in the case of each: First, delays caused by circumstances within the contractor's control; that is, delays for which the contractor is alone responsible and for which penalties were imposed. Second, for delays attributable to neither party no penalties were imposed. These delays are described in the contract as caused "by fire or water, or by any strike or stand-out of workmen employed in the construction of the hull, machinery, fittings, or equipment of said vessel, or in the fitting, placing,

and securing of her armor, or by other circumstances beyond the control of the party of the first part" (the shipbuilder). Third, for delays attributable to the United States no monetary penalties were imposed, but the contractor was entitled to a corresponding extension of the period prescribed for the completion of the vessel. These are the delays described as caused "by any act of the party of the second part," and as "delays which the Secretary of the Navy shall find to be properly attributable to the Navy Department or its authorized officers or agents, or any or either of them, and to have been a delay operating upon the final completion of the vessel within the time specified therefor in this contract."

As to delays attributable to neither party, while the contractor might suffer serious loss, it could claim nothing from the Government on that account, and the provision that no deduction should be made from the contract price on account of such delays gave the contractor all the relief which it could fairly ask.

For delays attributable to the Government there could be no deductions from the contract price, and this even though it had not been so stated in the contract. The reason and justice of this are obvious; hence the provision for an extension of time was not necessary to protect the contractor against deductions on account of delay, and the only possible object was to relieve the Government from pecuniary liability for such delays.

The provisions of paragraph 3 relate to the Government's default in the delivery of armor, whereas the provisions of paragraph 9 of the contract cover all manner of delays which the Secretary of the Navy shall find chargeable to the Government. The conditions and circumstances which surrounded the contract were as well understood by the contractor as by the Government. The contractor well knew that the Government had no armor-plate plant of its own and had to obtain the same from outside parties, and that the question of armor plate at that time was a very uncertain quantity. It entered into the contract fully informed and advised and it can not now claim that the contract clause providing for an extension had any other, different, or larger effect than that stated therein. In other words, the contractor understood that in case of default on the part of the Government in the delivery of the armor no penalties could be claimed against the Government, but that an extension of the contract period would result, if requested; otherwise, the ship might be tendered and subjected to her trial and delivered without her armor, as provided for in the third paragraph of the contract.

It is submitted that where the contract provides a method to be pursued by either party in case of the other's default, that that method is an exclusive one, and the court will not add thereto or take therefrom. Had the contract been silent upon this point and failed to provide for such contingency there would

seem to be some basis for the appellant's contention and for the recovery prayed for.

As it is, the contractor, having invoked this provision of the contract and obtained the extension sought, thereby relieved itself from liability for deductions from the contract price due to its failure to deliver the vessel within the original contract period.

Applying the principle of the well-known maxim, *expressio unius est exclusio alterius*, the contractor is concluded by the terms of the contract itself. If such condition was unsatisfactory to the contractor it should have refused to execute the contract. As before suggested, this was not the first contract containing similar provisions entered into between the parties for the construction of a battle ship; no duress, fraud, or concealment entered into the negotiations; both parties were fully empowered to contract; both were fully conversant with all the details of the contract in question; and every known contingency was provided for therein, or intended to be provided for therein, and particularly delays attributable to the Government. Clearly the contractor having executed the contract is bound by its terms and can not add thereto clauses not contained therein, or escape the consequences of clauses embraced therein. The courts may not read into contracts new provisions, especially when the contract itself clearly provides for the contingency afterwards complained of.

The case of *Haydnville Mining and Manufacturing Co. v. Art Institute* (39 Fed. Rep., 484) is in point. This was an action to recover for extra work and

also for damage due to the delay of other contractors. The contract was for fireproofing work done on a building, work which would necessarily be delayed if the building was not ready for the fireproofing at the proper time. The contract contained this provision:

Should delay be caused by other contractors to the positive hindrance of the contractor hereto, a just and proper amount of extra time shall be allowed by the architect, provided it shall have given written notice to said architect of such hindrance or delay.

In delivering its opinion in the case the court said:

Taking this clause of the contract and the specifications together, I construe them to mean this: That, if the plaintiff was delayed by reason of the tardiness or want of dispatch on the part of the contractors doing other classes of work upon the building, it should be entitled to such further time for the completion of the work as the architects would allow him (*sic.*), but I do not see that there is any provision that it is entitled to pecuniary damages by reason of said delay. Evidently the parties anticipated that this contractor, doing only a part of the work, and that which was largely dependent upon the completion of other classes of work by other contractors, must await the movements of those other contractors, and it seems to me that the stipulation for further time to complete the work in case of delay by other contractors implies that there is to be no pecuniary compensation for such delay.

The only points of difference between the case cited and the case at bar are that in the former there were no penalties for delay by the contractor, and the extension of time was to be in case of delay by other contractors, but these differences, however, do not affect the principle involved in the two cases, which is the same.

The fact that in the Haydnville Company's case the time was to be extended on account of delays caused by other contractors does not impair the value of that case as a precedent. The point decided was that where a contract provides that in the event of delays caused by other contractors the time is to be extended the owner is not liable for damages caused by such delays; and it inevitably follows from the same reasoning that where a contract provides that in the event of delays caused by the owner or his agents the time is to be extended he is not liable for damages caused by such delays. The two cases are as analogous as two cases may well be, and the principle enunciated by the court is applicable here.

The case of *Richard v. Clark* (88 N. Y. Supp., 242) bears a still closer resemblance to the case at bar than that last cited in that delays for which the owner was responsible were provided for. The contract read:

Should the contractor be obstructed or delayed in the prosecution or completion of his work by the act, neglect, delay, or default of the owner or the architect, or of any other contractor employed by the owner upon the

work, or by any damage which may happen by fire, lightning, earthquake, or cyclone, or by the abandonment of the work by the employee through no fault of the contractor, then the time herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of any or all of the causes aforesaid.

The architect was responsible for the delay, and the court below gave judgment in favor of the contractor for the damages due to such delay. The Supreme Court of New York, however, reversed the judgment and in the opinion rendered (p. 244 *Supra*) say:

Nor am I satisfied that any damages in the case are recoverable either for a delay or for extra work. The claim for delay was necessarily based upon the failure of defendant's architects to furnish the detail plans in time, as to which the contract provided that if the contractor "be delayed in the prosecution or completion of his work by the act, neglect, delay, or default of the owner or the architect," etc., "then the time herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of any or all the causes aforesaid." The contract therefore explicitly contemplated a situation such as here has arisen, and the intention of the parties, as evidenced by the agreement, evidently was that the time clause affected the plaintiff alone, and that he might be absolved therefrom to the extent and in the manner provided in the contract.

The decision in the case cited would have been the same had the delay been caused by the owner instead of the architect, so that the case fits the case at bar like a death mask.

It will thus be seen that the contingency of delay, both in the delivering of the armor and in all other matters, was amply provided for in the contract. In case the armor should not be delivered when called for by the contractor and needed in the work, the option was his to finish the ship and deliver her without her armor, and in case of any other delay, or in case of delay in delivering the armor, the contractor was to have the right of an extension of his contract without incurring any penalties; so that the provisions of the contract being free from any possible ambiguity do not call for interpretation by the court, and, as explained above, being entirely reasonable and conscionable, do not call for reformation.

Presumably the contract says what it means and means what it says; otherwise it would not have been reduced to writing. The text of the same is its own best interpreter. Nothing is to be found in the language of the contract, and it is submitted that nothing is fairly deducible therefrom, giving the contractor damages for the Government's delays or defaults. It is only by a forced construction of its provisions and by supplying clauses not contained therein that any justification of the appellant's position is possible.

If nothing had been said concerning a breach of the contract on the part of the Government and no pro-

vision had been made therefor, the case would be on a different footing; but this very circumstance having been contemplated by the parties and having been covered by the contract in the first place, so that the contractor might complete and deliver the vessel without the armor, or, in the second place, that he might apply for and obtain an extension of the contract period, no shred of a case is left for recovery in damages on account of the Government's default.

It has been announced by this tribunal repeatedly and with emphasis that the courts will not assume to make a contract for the parties which they did not choose to make for themselves. This has not been more tersely stated than in the opinion of the court in the case of *Morgan County v. Allen* (103 U. S., 515), as delivered by Mr. Justice Harlan:

We can only say, what can not be too often repeated, that hard cases can not be permitted to make bad law.

In the case of *Hudson Canal Co. v. Penna. Coal Co.* (8 Wall., 276), the court held:

A covenant can not be implied in the absence of language tending to a conclusion that the covenant sought to be set up was intended. The fact that the nonimplication of it makes a contract, in consequence of events happening subsequent to its being made, quite unilateral to its advantages, is not a sufficient ground to imply a covenant which would tend to balance advantages thus preponderating.

In other words, it was held in that case that courts may not incorporate into a sealed instru-

ment any covenant for the expression of which language is entirely wanting in the instrument and which can not be legally implied from any other covenant therein, although the contract as expressed may seem to be much in favor of one party, and the omission of a covenant was clearly occasioned by mistake.

The court further said:

Courts of law can not incorporate into a sealed instrument what the parties left out of it, even though the omission was occasioned by the clearest mistake; nor can they reject what the parties inserted, unless it be repugnant to some other part of the instrument.

In *Garinsel v. Krank* (22 Wall., 308) it was held that —

The court can not import words into a contract which would make it materially different in a vital particular from what it is.

A court of law can not incorporate into a sealed instrument that which is omitted, even by mistake, nor can anything be rejected unless clearly repugnant. (*Robbins v. Rollins*, 127 U. S., 633; *Calliford v. Gonillo*, 128 U. S., 158.)

The court is not at liberty either to disregard words used by the parties or to insert words which the parties have not made use of. (*Harrison v. Fortlage*, 161 U. S., 63.)

The courts may not make a contract for the parties. Their function and their duty consist simply in enforcing one actually made. (*Imperial Fire Ins. Co. v. Coos County*, 151 U. S., 462.)

Where the language of a contract is clear and explicit there is no call for construction. (*Calderon v. Atlas Steamship Co.*, 170 U. S., 280.)

In the latter case the court in its opinion, *inter alia*, states as follows:

Parties are presumed to know the force and effect of the language in which they have chosen to embody their contract, and to refuse to give effect to such language might result in artfully misleading others who have relied on the words being used in their ordinary sense. In construing contracts words are to receive their plain and literal meaning, even though the intention of the party drawing the contract may have been different from that expressed. (Citing *Clark on Contracts*, p. 593.)

Cases almost without number might be cited both in the federal and state courts holding that contracts are to be construed according to the intention of the parties as expressed therein, and that the courts will disregard the motives, the purposes, or the expectations of a party thereto if these are not in harmony with the plain import of the words used.

54 Texas, 65.

Clark v. Lillie, 34 Vt., 405.

Noyes v. Nichols, 28 Vt., 159.

Conn v. Lewis, 15 Ky., 66.

Hildreth v. Forrest, 27 Ky., 217.

Shultz v. Johnson, 44 Ky., 497.

Salmon Falls Mfg. Co. v. Portsmouth Co.,
46 N. H., 249.

The appellant's principal contention is that "The Government broke the contract and in consequence of that the claimant suffered damage, and is entitled to recover an amount equal to that damage." (Appellant's brief, p. 26.)

Counsel for the appellant in referring to paragraph 3 of the contract say:

Certain contingencies provided against in the latter part of this paragraph, and which, had they arisen, might have modified the obligations of both parties, did not arise, so we can ignore them.

The fact is that these so-called "certain contingencies" did arise and have modified the obligations of both parties. It is specifically stated in said paragraph 3 that in case of the Government's failure so to do the contractor might complete the vessel, without her armor, and tender her for trial in such condition, and in case of further failure of the Government to deliver said armor within five months after either a preliminary or conditional acceptance of the vessel said vessel should be finally accepted by the Government. Therefore the paragraph of the contract providing for the delivery of the armor makes provision also for the default of the Government in this respect and gives the vessel company the right to complete the vessel without her armor and tender her to the Government.

Furthermore, under paragraph 9, in case of the Government's default the appellant might apply for

and secure an extension* of the contract period corresponding with the time of the delay.

Appellant further says in this connection that—

It was the builder's right and obviously it was for the best interests of the United States, as well as its own, to proceed with the work as best it could, complete it, and sue for damages caused by the breach.

It is true, as stated, that the builder had the right to proceed with the work and complete the vessel, notwithstanding the Government's breach; but provision having been made for the breach in lieu of damages the contractor can not recover damages caused by the breach.

In this view the authorities cited by appellant (appellant's brief, p. 26) are not in point. Quotation is made from Hudson on Building Contract (I, pp. 303-1907) to the effect that—

If the prevention does not go to the root of the whole contract, but merely delays the performance, the contractor does not waive his right to recover damages merely by proceeding with the work.

As previously explained, the contractor in this case waives its right to recover the damage in the contract itself (not through any performance of the contract on appellant's part). Certainly it estops itself from the recovery of damage when it accepts the final payment and signs the release provided for by the contract.

The Government contends that upon its failure to furnish the armor plate as agreed an application might be made by the contractor for an extension corresponding to the time of delay, and that the extended contract period thereby becomes the real contract period; therefore there was no such delay as made the Government responsible to the contractor in damages.

This contention is characterized by appellant's counsel as "pure sophistry," and appellant says (p. 27 of its brief) that the Government might have deferred ordering the armor for years or forever, and if the Secretary kept on extending the Cramp company's building period the Government could have left the vessel on appellant's hands indefinitely and still have remained blameless.

It would seem that this argument is without force in view of the fact that appellant under its contract could tender the vessel without the armor. Again, it must be remembered that the Government at the time of entering into the contract for building this ship was in need of battle ships in view of the war with Spain, which was then imminent. In addition to this, the Government had a large sum of money already invested in this particular vessel, all of which contradicts the idea that the Government would indefinitely continue to extend the building period.

Appellant says (p. 32):

It was competent to provide, as the contract did, that no damages should be imposed for

delay occasioned without fault of the builder and beyond its control, whether the Government or some other agency were responsible. It was reasonable to discriminate, as the contract did, between delays due to the Government's fault and delays arising without fault of the Government or builder.

As previously explained, these contracts were unquestionably drawn with the idea in mind of protecting the Government against damages due to its failure to secure and deliver the armor "within the times and in the order to carry on the work properly."

The case of *Stubbings Co. v. Exposition Co.* (110 Ill. App., 210; appellant's brief, p. 33) is somewhat similar to the case at bar. However, it differs in this respect, that in the case cited the contract provided for the filing of claims for delays not attributable to the contractor, and stated when the same would be made and how they should be made. In other words, in that case damages were specifically provided for, thus clearly distinguishing it from the case at bar.

In the case of *Nelson v. Pickwick Co.* (30 Ill. App., 333, cited in appellant's brief, pp. 34 to 36, inclusive) there are also points of similarity presented to the case at bar. However, in that case there were other contractors on other parts of the work, and the contract provided that the appellant should cooperate with the contractors on other parts of the work and arrange matters so that none of the cooperating contractors should be delayed.

The court says (p. 334):

These portions of the specifications were in print, and it is a reasonable inference that contractors for other branches of the work were bound by like provisions.

This differentiates the case cited from the case at bar, and, furthermore, it appeared in evidence that a promise was made by the general agent of the appellees having authority, to the appellant, when but a small part of the work was done and extra pay was claimed as a condition for going on with it, that the company would pay the additional cost caused by such delay.

It is impossible to determine how much influence the promise to pay for the extra time by the appellee at the time the delay occurred may have had upon the mind of the court in arriving at its conclusion.

Moreover, in the case cited, the court held that—

The provision for the extra time was for the avoidance of the penalty the appellant would incur if he did not complete his contract on time.

In the present case the contract expressly provided that there should be no deductions for the delay due to circumstances beyond the contractor's control, so it is certain that the provision for extension was not for avoidance of penalty the contractor would incur if he failed to complete the work on time. This clearly distinguishes the cases.

There would seem to be a somewhat close resemblance between the case of *Del Genovese v. Third Ave. Ry. Co.* (13 N. Y. App., 412), cited in appellant's brief (p. 37), and the case at bar, although it is not clear that the two contracts are alike in all essential respects. Certainly in the contract construed by the court in the case cited it is not shown that there was any method provided for the contractor to finish the work despite the interruption of the other party or of other contractors. This is a vital variance between the two cases.

Taking into consideration the provisions of the contract in suit, which differ in many material respects from those contained in the cases cited by appellant in its brief, it is submitted that there is nothing which successfully controverts the position taken by the Government with respect to the contract herein. The rule of this case is laid down by Harmon in his work on contracts (p. 808, sec. 390), to the effect that where parties enter into engagements with express stipulations, it is to be presumed that they have expressed all the conditions by which they intend to be bound unless an intention to the contrary appears, and that where an agreement has been reduced to writing the parties will not be permitted to deny that they intended to make the stipulations contained in the instrument.

The cases of *Higgins v. Eagleton* (34 N. Y. Supp., 225) and *Aspen v. Austen* (5 Q. B. D., 671) are in point with the principle for which we contend,

holding, as appears in the opinion of the court in the last-mentioned case, that---

Where parties have entered into written engagements with express stipulations, it is manifestly not desirable to extend by any implication. The presumption is that, having expressed some, they have expressed all the conditions by which they intend to be bound under that instrument.

The contract for the building of this vessel provided that "when the conditions, covenants, and provisions of the contract are performed and fulfilled on the part of the party of the first part, then said party is entitled to receive the reserve or surplus of said reserve retained by the Government," on certain conditions, namely, "the execution of a final release to the party of the second part in such form as shall be approved by the Secretary of the Navy, of all claims of any kind or description under or by virtue of this contract." (Rec., p. 14.)

The release required by the contract was executed by appellant, wherein it "does hereby, for itself and its successors and assigns and its legal representatives, remise, release, and forever discharge the United States of and from all and all manner of debts, dues, sum and sums of money, accounts, reckonings, claims, and demands whatsoever in law and in equity, for or by reason of or on account of the construction of said vessel under the contract aforesaid, excepting the sum of twenty thousand dollars,

withheld by the Secretary of the Navy as above set forth." (Rec., pp. 27, 28.)

Every claim by this release on account of or growing out of the construction of the vessel in question, whether that claim be legal or equitable, was released by the execution of this instrument.

We respectfully submit that the Court of Claims was right in dismissing the petition, and we ask that its judgment be affirmed.

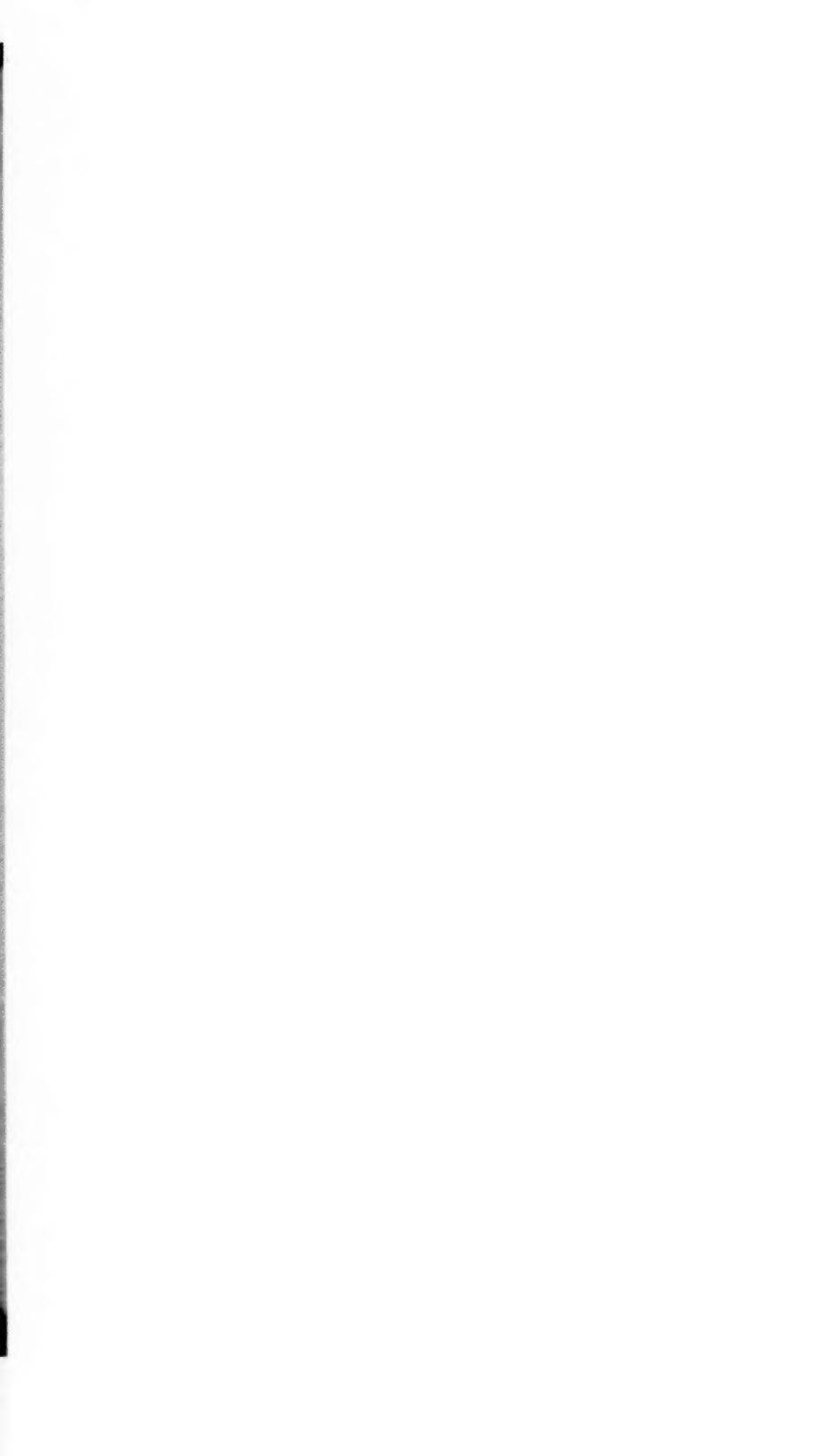
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WILLIAM CRAMP AND SONS SHIP AND ENGINE
BUILDING COMPANY *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 92. Argued January 19, 20, 1910. —Decided February 28, 1910.

Executive officers are not authorized to entertain and settle claims for unliquidated damages.

The Secretary of the Navy had power under the acts of June 10, 1896, c. 361, 29 Stat. 378, authorizing the building of the "Alabama," and of August 3, 1886, c. 849, 24 Stat. 215, to make a change in the terms of the contract requiring a final release to be given so that such release should not include claims arising under the contract which he did not have jurisdiction to entertain, and under a proviso in the release to that effect the contractors are not barred from

prosecuting their claim before the Court of Claims for unliquidated damages.

In this case a provision in a government contract having been treated by both parties as impracticable and therefore waived, the Secretary had power to change the terms of the release required by the contract, and leave the claims of the contractor to be presented to the Court of Claims. *Cramp & Sons v. United States*, 206 U. S. 118, distinguished.

Under the Tucker Act the Court of Claims has jurisdiction of a claim for unliquidated damages under a contract for building a war vessel, where a release had been given by the Secretary of the Navy with a proviso that it does not include claims arising under the contract other than those of which the Secretary has jurisdiction. 43 C. Cl. 202, reversed.

THE facts are stated in the opinion.

Mr. James H. Hayden, with whom *Mr. Robert C. Hayden* was on the brief, for appellant:

The contract did not obligate the claimant to relinquish the claim in suit, or any other claims that might accrue to it for breach of the contract by the United States. The contract itself was not a release of such claims. The acceptance by the claimant of the last payment did not create a bar to the claimant's right of action for the breach committed by the United States.

Performance by the Government of its covenant to supply armor failing, the builder's agreement to release went with it. "If part of the consideration agreed on be not performed, the whole accord fails." *City of Memphis v. Brown*, 20 Wall. 289; *Bank v. Leech*, 94 Fed. Rep. 310; 1 Smith's Leading Cases, 5th Am. ed., 445.

The elaborate and tautological expressions contained in the fifth paragraph of the release do not overcome the particular words of limitation, contained in the proviso, which limited the operation of the release to claims which the Secretary of the Navy had jurisdiction to entertain. *Texas &c. R. Co. v. Dashiell*, 198 U. S. 521.

The Secretary of the Navy and the Cramp Company were correct in the opinion expressed by the former and acquiesced in by the latter that the claim being one for unliquidated damages is of a kind the Department has no authority under the law to entertain. By the saving clause which was finally included in the release they adopted apt words to carry out their purpose to leave the claim in suit open and unsettled. Executive officers of the Government cannot entertain such claims, even when they grow out of contracts made by them. Op. Atty. Gen., ed. 1841, 882. See also *McKee v. United States*, 12 C. Cl. 514, 555; *Power v. United States*, 18 C. Cl. 263, 275; *McClure v. United States*, 19 C. Cl. 18, 28; *Braunen v. United States*, 20 C. Cl. 219, 223; *Pneumatic Gun Carriage Co. v. United States*, 36 C. Cl. 627, 630.

To give the release or the claimant's acceptance of the last payments the effect claimed for them by the Government and given them by the court below, would be to use them in a way not justified by the terms of the release, or intended by the parties, and would allow the Government to commit a fraud. *Parmlee v. Lawrence*, 44 Illinois, 405, 409; *Fire Ins. Assn. v. Wickham*, 141 U. S. 564, 576, 582. If the terms of the release were obscure, which they are not, it would have to be interpreted in such a way as to carry out the intent of the parties, to be ascertained from the correspondence which passed between them. *United States v. Peck*, 102 U. S. 64; *Merriam v. United States*, 107 U. S. 437, 441; *United States v. Gibbons*, 109 U. S. 200, 203; *Chicago & N. W. Ry. Co. v. Denver & N. W. Ry. Co.*, 143 U. S. 596, 609; *Nash v. Towne*, 5 Wall. 689, 699.

The Secretary had legislative authority to make a contract for the construction of the vessel in question and while this was limited in some particulars it was broad. He was as free to exercise his judgment in the modification of the contract as to the release as he was to make the contract in the beginning. *United States v. Barlow*, 184 U. S. 123; *Solomon v. United States*, 19 Wall. 17; *Redfield v. Windom*, 137 U. S.

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Argument for the United States.

636. This case is not governed by *United States v. Wm. Cramp & Sons*, 206 U. S. 118, known as the "Indiana" case.

It was the builder's right and obviously it was for the best interest of the United States, as well as its own, to proceed with the work as best it could, complete it, and sue for damages caused by the breach. 2 *Parsons on Contracts*, 679; *Clark v. United States*, 6 Wall. 543; *United States v. Speed*, 8 Wall. 77; *United States v. Behan*, 110 U. S. 338, 344; *Figh v. United States*, 8 C. Cl. 319; *Myerle v. United States*, 33 C. Cl. 1; *Cornwall v. Henson*, 2 Ch. (1900) 298, 300; *Hudson on Building Contracts*, 1907, 303, 521; *Stubbings Co. v. Exposition Co.*, 110 Ill. App. 210; *Nelson v. Pickwick Co.*, 30 Ill. App. 333; *Del Genovese v. Third Ave. R. R. Co.*, 13 N. Y. App. Div. 412; *S. C.*, 162 N. Y. 614.

Mr. Assistant Attorney General John Q. Thompson and Mr. Franklin W. Collins for the United States:

The proviso is not sufficient to confer upon appellant right of recovery.

The failure of the delivery of the armor by the Government within the times and in the order required to carry on the work properly had been fully provided for in the contract in other ways, and had nothing whatever to do either as consideration or otherwise with the release which was required by the contract. While the contract itself may not be a release of such claims as those in suit, it nevertheless provided for a release of all claims growing out of the contract. *Texas &c. R. Co. v. Dashiell*, 198 U. S. 521.

While the Secretary of the Navy may have power to direct the modification of a contract during the progress of the work he has not after his discretionary powers have ceased and only a plain ministerial duty remains. The Secretary was clothed with authority to close the contract in a prescribed manner. He could not make the final payment until a full and final release of all claims was given by the contractor, neither could he modify or change the form of release

required by the contract, but this does not conflict with the exercise of his discretionary powers in respect to changes and modifications while the work was in progress.

The courts will not assume to make a contract for the parties which they did not choose to make for themselves. *Morgan County v. Allen*, 103 U. S. 515; *Hudson Canal Co. v. Penna. Coal Co.*, 8 Wall. 276; *Garinzel v. Crump*, 22 Wall. 308; *Robbins v. Rollins*, 127 U. S. 633; *Culliford v. Gonillo*, 128 U. S. 158; nor is the court at liberty either to disregard words used by the parties or to insert words which the parties have not made use of. *Harrison v. Fortlage*, 161 U. S. 63; *Calderon v. Atlas Steamship Co.*, 170 U. S. 280.

Contracts are to be construed according to the intention of the parties as expressed therein, and the courts will disregard the motives, the purposes, or the expectations of a party thereto if these are not in harmony with the plain import of the words used. See 54 Texas, 65; *Clark v. Lillie*, 34 Vermont, 405; *Noyes v. Nichols*, 28 Vermont, 159; *Conn v. Lewis*, 15 Kentucky, 66; *Hildreth v. Forrest*, 27 Kentucky, 217; *Shultz v. Johnson*, 44 Kentucky, 497; *Salmon Falls Mfg. Co. v. Portsmouth Co.*, 46 N. H. 249.

MR. JUSTICE BREWER delivered the opinion of the court.

On September 24, 1896, the appellant entered into a contract with the United States for the building of an ironclad, afterwards known as the "Alabama." The contract was authorized by act of Congress of June 10, 1896, c. 399, 29 Stat. 361, 378. Under this act and that of August 3, 1886, c. 849, 24 Stat. 215, to which it refers, the Secretary of the Navy was charged with the duty of supervising the contract on behalf of the United States. After the completion of the vessel and the payment of the stipulated amount there was something asserted to be due to the building company as unliquidated damages on account of extra work caused by the United States, for which it brought suit in the Court of Claims. That

court found the amount to be \$49,792.66. Relying upon the decision of this court in a case between the same parties for also the building of an ironclad, the "Indiana," *United States v. Wm. Cramp & Sons Co.*, 206 U. S. 118, the Court of Claims rendered judgment for the defendant. The controversy in this, as in the prior case, turns upon the effect of a release. In that it was in this form:

"The William Cramp and Sons Ship and Engine Building Company, represented by me, Charles H. Cramp, president of said corporation, does hereby for itself and its successors and assigns, and its legal representative, remise, release and forever discharge the United States of and from all and all manner of debts, dues, sum and sums of money, accounts, reckonings, claims, and demands whatsoever, in law or in equity, for or by reason of, or on account of, the construction of said vessel under the contract aforesaid."

Here the same terms of release are used, but they are followed by this proviso:

"Provided, that this release shall not be taken to include claims arising under the said contract other than those which the Secretary of the Navy had jurisdiction to entertain."

That release was executed on May 18, 1896; this on April 19, 1901. We held that the former release settled all disputes between the parties as to claims "under or by virtue" of the contract. Evidently the proviso was incorporated with the purpose of accomplishing some change in the effect of the release. That purpose is disclosed by prior correspondence. On February 13, 1901, the Secretary of the Navy, answering a letter enclosing a claim for extra work of \$66,973.23, writes:

"I have to state that while, from a casual consideration of the matter, it might seem proper that the papers should be referred to the bureaus concerned for examination and report, it appears, after a careful consideration of the subject, that the claim, being for unliquidated damages, is of a kind the department has no authority under the law to entertain."

To which the company replied, suggesting this proviso:

"Provided, That nothing herein shall operate as a waiver of this company's right to sue for and recover judgment in the Court of Claims for damages incurred or losses sustained by the company in the prosecution of the contract work which were occasioned by delays or defaults on the part of the United States"—

and adding, in response to the statement of the Secretary, "that the claim being for unliquidated damages, is of a kind the department has no authority under the law to entertain;" that the act of March 3, 1887, c. 359, 24 Stat. 505, known as the "Tucker Act," vests the Court of Claims with jurisdiction to hear and determine such claims. Some further correspondence followed between the parties, which culminated in a letter from the company, enclosing the release as finally executed, and saying:

"This (release) contains a clause which excepts from the operation of the release claims arising under the contract, which you, as Secretary of the Navy, had not jurisdiction to entertain."

It is well understood that executive officers are not authorized to entertain and settle claims for unliquidated damages. Opinion of Attorney General Taney, in which he says:

"If the navy commissioners have refused to take the bread from Mr. Stiles, according to their contract, when he had prepared it of the quality called for by the agreement, it is not in the power of the executive branch of the Government to liquidate and pay the damages he may have sustained. If he has been damnified by the officers of the Government, Congress alone can redress the injury." (Opinions, ed. 1841, p. 882); *McKee v. United States*, 12 C. Cls. 504, 555-558.

In *Power v. United States*, 18 C. Cls. 263, 275, the court thus discussed the matter:

"The Secretary of the Interior concurred in the opinion that the claimant was equitably entitled to damages, and that he should be invited to furnish proof of the extent of his injury; but did not agree that the damages could be adjusted in

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the department. He proposed to submit the case to Congress.

"In this conclusion that the department had no authority to settle such a claim the Secretary was right. The laws regulating the payment of money from the Treasury, in the current business of the Government, are reviewed at length by our brother Richardson in his opinion in *McKee's Case*, 12 Ct. Cl. R. 555. He shows clearly that the laws provide only for the settlement and payment of accounts. An account is something which may be adjusted and liquidated by an arithmetical computation. One set of Treasury officers examine and audit the accounts. Another set is entrusted with the power of reviewing that examination, and with the further power of determining whether the laws authorize the payment of the account when liquidated. But no law authorizes treasury officials to allow and pass in accounts a number not the result of arithmetical computation upon a subject within the operation of the mutual part of a contract.

"Claims for unliquidated damages require for their settlement the application of the qualities of judgment and discretion. They are frequently, perhaps generally, sustained by extraneous proof, having no relation to the subjects of the contract, which are common to both parties: as, for instance, proof concerning the number of horses and the number of wagons, and the length of time that would have been required in performing a given amount of transportation. The results to be reached in such cases can in no just sense be called an account, and are not committed by law to the control and decision of Treasury accounting officers.

"As is well said by Judge Richardson, in the opinion already referred to (12 Ct. Cls. 556), this construction 'would exclude claims for unliquidated damages, founded on neglect or breach of obligations or otherwise, and so, by the well-defined and accepted meaning of the word 'account' and the sense in which the same and the words 'accounting' and 'accounting officers' appear to be used in the numerous sections of the

numerous acts of Congress wherein they occur, it would seem that the accounting officers have no jurisdiction of such claims except in special and exceptional cases, in which it has been expressly conferred upon them by special or private acts. And such has been the opinion of five Attorneys General—all who have officially advised the executive officers on the subject. Attorney General Tanev, in 1832, whose opinion is referred to by his successors in office; Attorney General Nelson in 1844 (4 Opins. 327); Attorney General Clifford in 1847 (4 Opins. 627); Attorney General Cushing in 1854 (6 Opins. 524); and Attorney General Williams in 1872 (14 Opins. 24). And the same views were expressed by this court in 1866 (*Carmack et al. v. United States*, 2 Ct. Cl. R. 126, 140.)' *McClure v. United States*, 19 *Id.* 28-29; *Brannen v. United States*, 20 *Id.* 219, 223-224; 4 Opin. Attorneys General, 327-328; *Id.* 626, 630."

But it is contended that the contract, independently of the release, provided for a settlement of all matters growing out of the delay in the completion of the vessel, although this is in apparent conflict with the opening statement of the Government in its brief, for there it says: "The issue here is whether the proviso in that release saves the contractor from the final and complete surrender of his right to recover on the claims set out in the petition." But this, although it indicates the views of the Government of the question at issue, does not preclude it from presenting other matters, and it insists that by the third clause in the contract, the vessel, when completed without the armor, was to be subjected to a trial provided for in a subsequent clause of the contract, and a board of naval officers appointed by the Secretary of the Navy was to determine the deduction from the total price of the vessel under the contract if completed with armor. It further contends that by the ninth clause of the contract the matter of possible delay was recognized by the Secretary of the Navy, and his determination as to the effect thereof was to be conclusive. Now it may be said that both the contractor and the Government had the right to insist upon the

delivery of the vessel when it was completed without the armor, and that the deduction in price should then be settled by the board of officers appointed by the Secretary. It may also be conceded that the Government could have insisted upon a release in the form specified in the contract, but neither the company nor the Government insisted on the delivery of the vessel at the time it was launched and before it was armored. The Government left the vessel with the company, waiting for armor to be put on—armor which it had not then been able to secure and tender to the company, and when the question arose as to a settlement it did not insist upon a release as specified in the contract. This contract was plainly treated by both parties as impracticable, and therefore waived. Evidently from his letter of February 13, 1901, the Secretary was of the opinion that, equitably, there was something due to the company, and yet, realizing that that question was not one for his determination, in order that full justice might be done, he consented to a change in the terms of the release, and this he had power to do. *Salomon v. United States*, 19 Wall. 17; *United States ex rel. Redfield v. Windom*, 137 U. S. 636; *United States v. Barlow*, 184 U. S. 123, 135.

By the "Tucker Act" jurisdiction is conferred upon the Court of Claims "to hear and determine . . . all claims . . . for damages, liquidated or unliquidated, in cases not sounding in tort."

It results therefrom that a release executed in accordance with the terms of the contract would have extinguished all claims of the company against the United States growing out of the contract (206 U. S. 118); that the Secretary of the Navy had no power to pass upon and adjudicate claims for unliquidated damages; that he had power to accept a release such as was given, and that the proviso left for determination in the courts claims for unliquidated damages growing out of the contract; that under the Tucker Act the Court of Claims had jurisdiction to inquire into and determine claims for unliquidated damages, and that upon the facts found there

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is due to the company from the United States for extra work caused by the United States the sum of \$49,792.66.

The judgment of the Court of Claims is reversed and the case remanded to that court, with instructions to enter judgment for that amount.
